

**WISCONSIN STATUTES
AND
ADMINISTRATIVE CODE

RELATING TO THE PRACTICE OF
PODIATRIC MEDICINE AND SURGERY**

MARCH 2003



"DO NOT RETURN THIS CODE BOOK. IT YOURS TO KEEP"

State of Wisconsin
Department of Regulation and Licensing
Podiatrists Affiliated Credentialing Board
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INTRODUCTION

The Podiatrists Affiliated Credentialing Board licenses and regulates Podiatrists. The Podiatrists Affiliated Credentialing Board is composed of members of the profession and public members who are appointed by the Governor and confirmed by the Senate.

The Department of Regulation and Licensing is an umbrella agency providing administrative services to various professional boards. Within the department, the Bureau of Health Professions provides administrative services to the Podiatrists Affiliated Credentialing Board. Questions about board business may be directed to the credentialing board in care of the Bureau of Health Professions, 1400 East Washington Ave. PO Box 8935, Madison, WI 53708.

This book contains statutes and rules relevant to the regulation and practice of podiatric medicine and surgery. To assist in using these materials, a subject index is included at the end of this book. Only a limited number of statutes and rules are included in this book.

The development of the law in this area is ongoing. Therefore, these rules and statutes may be revised subsequent to the printing of this book. Most local libraries maintain current sets of Wisconsin Administrative Code and the Wisconsin Statutes. These documents as well as other state publications are available from the Department of Administration, Document Sales Division, PO Box 7840, Madison, WI 53707.

All Wisconsin Statutes and Administrative Codes are available on the Internet at the following addresses:

Statutes: <http://www.legis.state.wi.us/rsb/statutes.html>

Rules: <http://www.legis.state.wi.us/rsb/code/codtoc.html>

CHAPTER 15

STRUCTURE OF THE EXECUTIVE BRANCH

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SUBCHAPTER I

GENERAL PROVISIONS

15.001 Declaration of policy. (1) **THREE BRANCHES OF GOVERNMENT.** The “republican form of government” guaranteed by the U.S. constitution contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws. It is a traditional concept of American government that the 3 branches are to function separately, without intermingling of authority, except as specifically provided by law.

(2) **GOALS OF EXECUTIVE BRANCH ORGANIZATION.** (a) ~~As~~ the chief administrative officer of the state, the governor should be provided with the administrative facilities and the authority to carry out the functions of the governor’s office efficiently and effectively within the policy limits established by the legislature.

(b) The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments and independent agencies consistent with executive capacity to administer effectively at all levels.

(c) The integration of the agencies in the executive branch should be on a functional basis, so that programs can be coordinated.

(d) Each agency in the executive branch should be assigned a name commensurate with the scope of its program responsibilities, and should be integrated into one of the departments or independent agencies of the executive branch as closely as the conflicting goals of administrative integration and responsiveness to the legislature will permit.

(3) **GOALS OF CONTINUING REORGANIZATION.** ~~Structural~~ reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

(a) The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policy-making capability and to improve the administrative capability of the executive to carry out these policies.

(b) The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of related programs in function-oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(c) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

History: 1991 a.316.

15.01 Definitions. In this chapter: **(lg)** “Affiliated credentialing board” means a part-time body that meets all of the following conditions:

(a) ~~Is~~ attached to an examining board to regulate a profession that does not practice independently of the profession regulated by the examining board or that practices in collaboration with the profession regulated by the examining board.

(b) With the advice of the examining board to which it ~~is~~ attached, sets standards of professional competence and conduct for the profession under the affiliated credentialing board’s supervision, reviews the qualifications of prospective new practitioners, grants credentials, takes disciplinary action against credential holders and performs other functions assigned to it by law.

(lr) “Board” means a part-time body functioning as the policy-making unit for a department or independent agency or a part-time body with policy-making or quasi-judicial powers.

(2) “Commission” means a 3-member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the Wisconsin waterways commission which shall consist of 5 members, the parole commission which shall consist of 8 members, and the Fox River management commission which shall consist of 7 members. A Wisconsin group created for participation in a continuing interstate body, or the interstate body itself, shall be known as a “commission”, but is not a commission for purposes of s. 15.06. The parole commission created under s. 15.145 (1) shall be known as a “commission”, but is not a commission for purposes of s. 15.06. The sentencing commission created under s. 15.105 (27) shall be known as a “commission” but is not a commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

(3) “Committee” means a part-time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment. Because of their temporary nature, committees shall be created by session law rather than by statute.

(4) “Council” means a part-time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government, except the Wisconsin land council has the powers specified in s. 16.965 (3) and (5) and the powers granted to agencies under ch. 227, the Milwaukee River revitalization council has the powers and duties specified in s. 23.18, the council on physical disabilities has the powers and duties specified in s. 46.29 (1) and (2), and the state council on alcohol and other drug abuse has the powers and duties specified in s. 14.24.

(5) “Department” means the principal administrative agency within the executive branch of Wisconsin state government, but does not include the independent agencies under subch. III.

(6) “Division,” “bureau,” “section” and “unit” means the subunits of a department or an independent agency, whether specifically created by law or created by the head of the department or the independent agency for the more economic and efficient administration and operation of the programs assigned to the department or independent agency. The office of justice assistance in the department of administration and the office of credit unions in the

department of financial institutions have the meaning of "division" under this subsection. The office of the long-term care ombudsman under the board on aging and long-term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subsection.

(7) "Examining board" means a part-time body which sets standards of professional competence and conduct for the profession under its supervision, prepares, conducts and grades the examinations of prospective new practitioners, grants licenses, investigates complaints of alleged unprofessional conduct and performs other functions assigned to it by law. "Examining board" includes the board of nursing.

(8) "Head", in relation to a department, means the constitutional officer, commission, secretary or board in charge of the department. "Head", in relation to an independent agency, means the commission, commissioner or board in charge of the independent agency.

(9) "Independent agency" means an administrative agency within the executive branch created under subch. III.

History: 1977 c. 29, 274; 1979 c. 34; 1983 a. 27, 189, 371, 410, 538; 1985 a. 29, 120, 180; 1987 s. 27, 342, 399; 1989 a. 31, 107, 202; 1991 a. 39, 269, 315; 1993 a. 16, 107, 210, 215; 1995 a. 27 ss. 74 and 9145 (1); 1995 a. 442, 462; 1997 a. 27, 237; 2001 a. 16, 105, 109.

15.02 Offices, departments and independent agencies. The constitutional offices, administrative departments and independent agencies which comprise the executive branch of Wisconsin state government are structured as follows:

(1) **SEPARATE CONSTITUTIONAL OFFICES.** The governor, lieutenant governor, secretary of state and state treasurer each head a staff to be termed the "office" of the respective constitutional officer.

(2) **PRINCIPAL ADMINISTRATIVE UNITS.** The principal administrative unit of the executive branch is a "department" or an "independent agency". Each such unit shall bear a title beginning with the words "State of Wisconsin" and continuing with "department of..." or with the name of the independent agency. A department may be headed by a constitutional officer, a secretary, a commission or a board. An independent agency may be headed by a commission, a commissioner or a board.

(3) **INTERNAL STRUCTURE.** (a) The secretary of each department may, subject to sub.(4), establish the internal structure within the office of secretary so as to best suit the purposes of his or her department. No secretary may authorize the designation of "assistant secretary" as the official position title of any employee of his or her department.

(b) For field operations, departments may establish district or area offices which may cut across divisional lines of responsibility.

(c) For their internal structure, all departments shall adhere to the following standard terms, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

1. The principal subunit of the department is the "division". Each division shall be headed by an "administrator". The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" and the executive staff director of the office of justice assistance in the department of administration and the director of credit unions have the meaning of "administrator" under this subdivision.

2. The principal subunit of the division is the "bureau". Each bureau shall be headed by a "director". The office of the long-term care ombudsman under the board on aging and long-term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subdivision.

2m. Notwithstanding subs. 1. and 2., the principal subunit of the department of tourism is the "bureau", which shall be headed by a "director".

3. If further subdivision is necessary, bureaus may be divided into subunits which shall be known as "sections" and which shall be headed by "chiefs" and sections may be divided into subunits which shall be known as "units" and which shall be headed by "supervisors".

(4) **INTERNAL ORGANIZATION AND ALLOCATION OF FUNCTIONS.** The head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the

department or independent agency to promote economic and efficient administration and operation of the department or independent agency. The head may delegate and redelegate to any officer or employee of the department or independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

History: 1971 c. 261; 1973 c. 12; 1975 c. 39; 1977 c. 29; 1979 c. 221; 1987 a. 27, 399; 1993 a. 16, 184, 215, 491; 1995 a. 27 ss. 75, 76, 76c and 9145 (1); 1997 a. 27.

Limits of internal departmental reorganization discussed. 61 Atty. Gen. 306.

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be provided to the department of transportation as required under s. 189.02 (7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

History: 1981 c. 347; 1983 a. 21; 1993 a. 123; 1999 a. 9.

15.04 Heads of departments and independent agencies; powers and duties. (1) **DUTIES.** Each head of a department or independent agency shall:

(a) **Supervision.** Except as provided in s. 15.03, plan, direct, coordinate and execute the functions vested in the department or independent agency.

(b) **Budget.** Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram and activity therein.

(c) **Advisory bodies.** In addition to any councils specifically created by law, create and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, if such reimbursement is made, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of such a council or committee shall be paid by the agency which pays the officer's or employee's salary.

(d) **Biennial report.** On or before October 15 of each odd-numbered year, submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the performance and operations of the department or independent agency during the preceding biennium, and projecting the goals and objectives of the department or independent agency as developed for the program budget report. The secretary of administration may prescribe the format of the report and may require such other information deemed appropriate. Each department or independent agency shall provide a copy of its biennial report to legislators upon request. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require. A department or independent agency may, on or before October 15, submit an annual report prepared by it, in place of the biennial report required under this paragraph, if the submission of the annual reports is approved by the secretary of administration.

(e) **Seal.** Have authority to adopt a seal for the department or independent agency.

(f) **Bonds.** Have authority to require that any officer or employee of the department or independent agency give an official bond under ch.

19, if the secretary of administration agrees that the position held by such officer or employee requires bonding.

(g) Discrimination review. In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex, marital status or sexual orientation as defined in s. 111.32 (13m), examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

(i) Records and forms management program. Establish and maintain a records and forms management program.

(j) Records and forms officer. Appoint a records and forms officer, who shall be responsible for compliance by the department or independent agency with all records and forms management laws and rules and who may prevent any form from being put into use.

(k) Form numbering and filing system. Establish a numbering and filing system for forms.

(m) Notice on forms. See that each form used by the department or independent agency to seek information from municipalities, counties or the public contains on the first page of the form, or in the instructions for completing the form, a conspicuous notice of the authorization for the form, whether or not completing the form is voluntary, if it is not voluntary, the penalty for failure to respond and whether or not any personally identifiable information, as defined under s. 19.62 (5), requested in the form is likely to be used for purposes other than for which it is originally being collected. This paragraph does not apply to state tax forms.

(2) DEPUTY. Each secretary of a department or head of an independent agency under s. 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies as provided in s. 21.18 (1). In this subsection "secretary" includes the attorney general and the state superintendent of public instruction.

(3) DEPUTY APPROVALS. Positions for which appointment is made under sub.(2) may be authorized only under s. 16.505.

History: 1971 c. 125; 1975 c. 94; 1977 c. 194, 273, 418, 447; 1979 c. 221; 1981 c. 112, 350; 1981 c. 391 s. 210; 1983 a. 27, 524; 1985 a. 29; 1985 a. 180 ss. 2 to 4, 30m; 1985 a. 332; 1987 a. 147 s. 25; 1987 a. 186; 1989 a. 248; 1991 a. 39, 189; 1995 a. 27; 1997 a. 73.

15.05 Secretaries. (1) SELECTION. (a) If a department is under the direction and supervision of a secretary, the secretary shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(b) Except as provided in pars.(c) and (d), if a department is under the direction and supervision of a board, the board shall appoint a secretary to serve at the pleasure of the board outside the classified service. In such departments, the powers and duties of the board shall be regulatory, advisory and policy-making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board. The secretary, with the approval of the board, shall promulgate rules for administering the department and performing the duties assigned to the department.

(c) The secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(d) The secretary of agriculture, trade and consumer protection shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(3) EXECUTIVE ASSISTANT. Each secretary may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the secretary prescribes. In this subsection, "secretary" includes the attorney general, the adjutant general, the director of the technical college system and the state superintendent of public instruction.

(3m) FIELD DISTRICT OR FIELD AREA DIRECTORS. Each secretary may appoint a director under the classified service for each district or area office established in his or her department under s. 15.02 (3) (b).

(4) OFFICIAL OATH. Each secretary shall take and file the official oath prior to assuming office.

(5) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub.(3) may be authorized only under s. 16.505.

History: 1973 c. 90; 1977 c. 4, 196; 1985 a. 18; 1985 a. 332 s. 251 (3); 1989 a. 31, 169; 1993 a. 399; 1995 a. 27.

A secretary, appointed by the governor, could be removed only by the governor, even though the general appointment statute had been amended to provide that the secretary is appointed by a board to serve at the board's pleasure. *Moses v. Board of Veterans Affairs*, 80 Wis.2d 411, 259 N.W.2d 102 (1977).

15.06 Commissions and commissioners. (1) SELECTION OF MEMBERS. (a) Except as otherwise provided in this subsection, the members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6-year terms expiring on March 1 of the odd-numbered years.

(ag) Members of the Wisconsin waterways commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 5-year terms.

(ar) The commissioner of railroads shall be nominated by the governor, and with the advice and consent of the senate appointed, for a 6-year term expiring on March 1 of an odd-numbered year.

(b) The commissioner of insurance shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The governor may remove from office the commissioner of insurance who was appointed for a fixed term before August 1, 1987.

(d) The members of the personnel commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for 5-year terms, subject to the following conditions:

1. At least one member shall be licensed to practice law in this state.

2. They shall possess some professional experience in the field of personnel or labor relations.

3. No member may hold any other position in state employment.

4. No member, when appointed or for 3 years immediately prior to the date of appointment, may have been an officer of a committee in any political party, partisan political club or partisan political organization or have held or been a candidate for any partisan elective public office. No member may become a candidate for or hold any such office.

5. At no time may more than 2 members be adherents of the same political party.

6. Each member of the commission shall be a U.S. citizen and shall have been a resident of this state for at least 3 years.

(2) SELECTION OF OFFICERS. Each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. At the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission to serve as the commission's chairperson for a 2-year term expiring on March 1 of the odd-numbered year except that:

(a) Commencing March 1, 1979, and thereafter, the labor and industry review commission shall elect one of its members to serve as the commission's chairperson for a 2-year term expiring on March 1 of the odd-numbered year.

(3) FULL-TIME OFFICES. (a) A commissioner may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to:

1. The commissioner of insurance.

3. The members of the Wisconsin waterways commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of the commissioner of insurance, nor shall the commissioner hold any other public office.

(4) CHAIRPERSON; ADMINISTRATIVE DUTIES. The administrative duties of each commission shall be vested in its chairperson, to be administered by the chairperson under the statutes and rules of the commission and subject to the policies established by the commission.

(4m) EXECUTIVE ASSISTANT. Each commission chairperson under s. 230.08 (2) (m) and each commissioner of the public service commission may appoint an executive assistant to serve at his or her

pleasure outside the classified service. The executive assistant shall perform duties as the chairperson or commissioner prescribes.

(5) **FREQUENCY OF MEETINGS; PLACE.** Every commission shall meet on the call of the chairperson or a majority of its members. Every commission shall maintain its offices in Madison, but may meet or hold hearings at such other locations as will best serve the citizens of this state.

(6) **QUORUM.** A majority of the membership of a commission constitutes a quorum to do business, except that vacancies shall not prevent a commission from doing business. This subsection does not apply to the parole commission.

(7) **REPORTS.** Every commission attached to a department shall submit to the head of the department, upon request of that person not more often than annually, a report on the operation of the commission.

(8) **OFFICIAL OATH.** Every commissioner shall take and file the official oath prior to assuming office.

(9) **EXECUTIVE ASSISTANT APPROVALS.** Positions for which appointment is made under sub.(4m) may be authorized only under s. 16.505.

History: 1971 c. 193, 307; 1977 c. 29, 196, 274; 1981 c. 347; 1983 a. 27, 371, 410, 538; 1985 a. 29; 1987 a. 27, 403; 1989 a. 31; 1991 a. 39, 269, 316; 1993 a. 16, 123; 1995 a. 27; 1997 a. 27; 2001 a. 16.

A single member of the personnel commission is empowered to act as the commission when 2 of the 3 commission positions are vacant. 68 Atty. Gen. 323.

A commissioner designated as Chairperson of the commission under sub.(2) is not appointed to a new position, and An. IV, s. 26, precludes a salary increase based on that designation. 76 Atty. Gen. 52.

Sub.(3) (a) prohibits a commissioner from pursuing business interests that would prevent properly fulfilling the duties of the office. 77 Atty. Gen. 36.

15.07 Boards. (1) **SELECTION OF MEMBERS.** (a) If a department or independent agency is under the direction and supervision of a board, the members of the board, other than the members serving on the board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law, except:

1. Members of the higher educational aids board shall be appointed by the governor without senate confirmation.

2. Members of the elections board shall be appointed as provided in s. 15.61.

3. Members of the employee trust funds board appointed or elected under s. 15.16 (1) (a), (b), (d) and (f) shall be appointed or elected as provided in that section.

4. Members of the investment board appointed under s. 15.76 (3) shall be appointed as provided in that section.

5. The members of the educational communications board appointed under s. 15.57 (5) and (7) shall be appointed as provided in that section.

6. Members of the University of Wisconsin Hospitals and Clinics Board appointed under s. 15.96 (8) shall be appointed by the governor without senate confirmation.

(b) For each board not covered under par.(a), the governor shall appoint the members of the board, other than the members serving on the board because of holding another office or position and except as otherwise provided, for terms prescribed by law except that all members of the following boards, or all members of the following boards specified in this paragraph, other than the members serving on a board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, for terms provided by law:

1. Banking review board.
2. College savings program board.
3. Credit union review board.
5. Savings and loan review board.
8. Real estate board.
9. Board on aging and long-term care.
10. Land and water conservation board.
11. Waste facility siting board.
12. Prison industries board.
14. Deferred compensation board.
15. The 3 members of the lower Wisconsin state riverway board appointed under s. 15.445(3) (b) 7.
- 15m. The members of the state fair park board appointed under s. 15.445(4) (a) 3. to 5.
16. Land information board.

Note: Subd. 16. is repealed eff. 9-1-03 by 1997 Wis. Act 27.

17. Real estate appraisers board.

18. Savings bank review board.

19m. Auctioneer board.

20. The 3 members of the Kickapoo reserve management board appointed under s. 15.445 (2) (b) 3.

22. Private employer health care coverage board.

Note: Subd. 22. is repealed eff. 1-1-10 by 1999 Wis. Act 9.

(c) Except as provided under par.(cm), fixed terms of members of boards shall expire on May 1 and, if the term is for an even number of years, shall expire in an odd-numbered year.

(cm) The term of one member of the ethics board shall expire on each May 1. The terms of 3 members of the development finance board appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every even-numbered year and the terms of the other 3 members appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every odd-numbered year. The terms of the 3 members of the land and water conservation board appointed under s. 15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under s. 15.135 (4) (b) 2m. shall expire on May 1 of an even-numbered year. The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate appraisers board and the terms of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even-numbered year.

(cs) No member of the auctioneer board, real estate appraisers board or real estate board may be an officer, director or employee of a private organization that promotes or furthers any profession or occupation regulated by that board.

(2) **SELECTION OF OFFICERS.** At its first meeting in each year, every board shall elect a chairperson, vice chairperson and secretary each of whom may be reelected for successive terms, except that:

(a) The chairperson and vice chairperson of the investment board shall be designated biennially by the governor.

(b) The chairperson of the board on health care information shall be designated biennially by the governor.

(d) The officers elected by the board of regents of the University of Wisconsin System and the technical college system board shall be known as a president, vice president and secretary.

(e) The representative of the department of justice shall serve as chairperson of the claims board and the representative of the department of administration shall serve as its secretary.

(f) The state superintendent of public instruction or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

(g) A representative of the department of justice designated by the attorney general shall serve as nonvoting secretary to the law enforcement standards board.

(h) The chairperson of the state fair park board shall be designated annually by the governor from among the members appointed under s. 15.445 (4) (a) 3., 4. and 5.

(j) At its first meeting in each even-numbered year, the state capitol and executive residence board shall elect officers for 2-year terms.

(k) The governor shall serve as chairperson of the governor's work-based learning board.

(L) The governor shall serve as chairperson of the information technology management board and the chief information officer shall serve as secretary of that board.

(3) **FREQUENCY OF MEETINGS.** (a) If a department or independent agency is under the direction and supervision of a board, the board shall meet quarterly and may meet at other times on the call of the chairperson or a majority of its members. If a department or independent agency is under the direction and supervision of a board, the board shall, in addition, meet no later than August 31 of each even-numbered year to consider and approve a proposed budget of the department or independent agency for the succeeding fiscal biennium.

(b) Except as provided in par.(bm), each board not covered under par.(a) shall meet annually, and may meet at other times on the call of the chairperson or a majority of its members. The auctioneer board, the real estate board and the real estate appraisers board shall also meet on the call of the secretary of regulation and licensing or his or her designee within the department.

(bm) 1. The board on health care information shall meet 4 times each year and may meet at other times on the call of the chairperson or a majority of the board's members.

2. The environmental education board shall meet 4 times each year and may meet at other times on the call of the chairperson.

3. The auctioneer board shall meet at least 4 times each year.

4. The information technology management board shall meet at least 4 times each year and may meet at other times on the call of the chairperson.

(4) QUORUM. A majority of the membership of a board constitutes a quorum to do business and, unless a more restrictive provision is adopted by the board, a majority of a quorum may act in any matter within the jurisdiction of the board. This subsection does not apply to actions of the ethics board or the school district boundary appeal board as provided in ss. 19.47 (4) and 117.05 (2) (a).

(5) REIMBURSEMENT FOR EXPENSES; COMPENSATION. Except as provided in sub.(5m), the members of each board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of a board to be paid by the agency which pays the member's salary. The members shall receive no compensation for their services, except that the following members of boards, except full-time state officers or employees, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

(a) Members of the investment board, \$50 per day.

(b) Members of the banking review board, \$25 per day but not to exceed \$1,500 per year.

(c) Members of the auctioneer board, \$25 per day.

(d) Members of the board of agriculture, trade and consumer protection, not exceeding \$35 per day as fixed by the board with the approval of the governor, but not to exceed \$1,000 per year.

(e) In lieu of a per diem, the members of the technical college system board shall receive \$100 annually.

(f) Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive members of the group insurance board, members of the deferred compensation board and members of the employee trust funds board, \$25 per day.

(g) Members of the savings and loan review board, \$10 per day.

(gm) Members of the savings bank review board, \$10 per day.

(h) Voting members of the land and water conservation board, \$25 per day.

(i) Members of the educational approval board, \$25 per day.

(j) Members of the state fair park board, \$10 per day but not to exceed \$600 per year.

(k) Members of the ethics board, \$25 per day.

(L) Members of the school district boundary appeal board, \$25 per day.

(n) Members of the elections board, \$25 per day.

(o) Members of the burial sites preservation board, \$25 per day.

(r) Members of the real estate board, \$25 per day.

(s) Members of the credit union review board, \$25 per day but not to exceed \$1,500 per year.

(t) Members of the waste facility siting board who are town or county officials, \$35 per day.

(w) Members of the lower Wisconsin state riverway board, \$25 per day.

(x) Members of the real estate appraisers board, \$25 per day.

(y) Members of the Kickapoo reserve management board, \$25 per day.

(5m) LIMITATIONS ON SALARY AND EXPENSES. (b) Lower Wisconsin state riverway board. The members, except for the chairperson, of the lower Wisconsin state riverway board shall be reimbursed under sub.(5) for only their necessary and actual travel expenses incurred in the performance of their duties, or shall be paid \$25 plus mileage incurred in the performance of their duties, whichever is greater. The chairperson of the lower Wisconsin state riverway board shall be reimbursed for all his or her actual and necessary expenses incurred in the performance of his or her duties. The lower Wisconsin state riverway board shall determine which expenses of the chairperson are actual and necessary before reimbursement.

(6) REPORTS. Every board created in or attached to a department or independent agency shall submit to the head of the department or

independent agency, upon request of that person not more often than annually, a report on the operation of the board.

(7) OFFICIAL OATH. Each member of a board shall take and file the official oath prior to assuming office.

History: 1971 c. 100 s. 23; 1971 c. 125, 261, 270, 323; 1973 c. 90, 156, 299, 334; 1975 c. 39, 41, 422; 1977 c. 29 ss. 24, 26, 163m (3); 1977 c. 203, 277, 418, 427; 1979 c. 34, 110, 221, 346; 1981 c. 20, 62, 94, 96, 156, 314, 346, 374, 391; 1983a, 27, 282, 403; 1983b, 20, 29, 316; 1987 a. 27, 119, 142, 354, 399, 403; 1989 a. 31, 102, 114, 219, 299, 340; 1991 a. 25, 39, 116, 221, 269, 316; 1993a, 16, 75, 102, 184, 349, 399, 490; 1995 a. 27, 216, 247; 1997 a. 27; 1999 a. 9, 44, 181, 197; 2001 a. 16.

"Membership" as used in sub.(4) means the authorized number of positions and not the number of positions that are currently occupied. 66 Atty. Gen. 192.

15.08 Examining boards and councils. (1) SELECTION OF MEMBERS. All members of examining boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an examining board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under s. 15.405 or 15.407 shall have all the powers and duties of other members except they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.405 or 15.407 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the board, examining board or examining council to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the chiropractic examining board, the dentistry examining board, the hearing and speech examining board, the medical examining board, perfusionists examining council, respiratory care practitioners examining council and council on physician assistants, the board of nursing, the nursing home administrator examining board, the veterinary examining board, the optometry examining board, the pharmacy examining board, the marriage and family therapy, professional counseling, and social work examining board, and the psychology examining board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(c) The membership of each examining board and examining council created in the department of regulation and licensing after June 1, 1975, shall be increased by one member who shall be a public member appointed to serve for the same term served by the other members of such examining board or examining council, unless the act relating to the creation of such examining board or examining council provides that 2 or more public members shall be appointed to such examining board or examining council.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every examining board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every examining board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The medical examining board shall meet at least 12 times annually.

(c) The hearing and speech examining board shall meet at least once every 3 months.

(4) QUORUM. (a) A majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two-thirds of the voting membership of the examining board.

(5) GENERAL POWERS. Each examining board: (a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each examining board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each examining board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an examining board shall, unless the member is a full-time salaried employee of this state, be paid a per diem of \$25 for each day on which the member was actually and necessarily engaged in the performance of examining board duties. Each member of an examining board shall be reimbursed for the actual and necessary expenses incurred in the performance of examining board duties.

(8) OFFICIAL OATH. Every member of an examining board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every examining board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the examining board.

(10) SEAL. Every examining board may adopt a seal.

History: 1971 c. 40; 1975 c. 86, 199; 1977 c. 418; 1979 c. 32; 1979 c. 34 ss. 32e to 32s, 2102 (45) (a); 1979 c. 221; 1981 c. 94; 1983 a. 403,524; 1985 a. 332,340; 1987 a. 399; 1989 a. 229, 316, 359; 1991 a. 39, 160, 316; 1993 a. 105, 107, 184, 490; 1995 a. 245; 1997 a. 175; 1999 a. 180; 2001 a. 80, 89, 105.

Selection and terms of officers of regulatory and licensing boards are discussed. 75 Atty. Gen. 247 (1986).

15.085 Affiliated credentialing boards. (1) SELECTION OF MEMBERS. All members of affiliated credentialing boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an affiliated credentialing board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under s. 15.406 shall have all of the powers and duties of other members except that they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.406 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the affiliated credentialing board to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the physical therapists affiliated credentialing board, podiatrists affiliated credentialing board or occupational therapists affiliated credentialing board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every affiliated credentialing board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every affiliated credentialing board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The chairperson of an affiliated credentialing board shall meet at least once every 6 months with the examining board to which the

affiliated credentialing board is attached to consider all matters of joint interest.

(4) QUORUM. (a) A majority of the membership of an affiliated credentialing board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the affiliated credentialing board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two-thirds of the membership of the affiliated credentialing board.

(5) GENERAL POWERS. Each affiliated credentialing board:

(a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. In addition to any other procedure under ch. 227 relating to the promulgation of rules, when promulgating a rule, other than an emergency rule under s. 227.24, an affiliated credentialing board shall do all of the following:

1. Submit the proposed rule to the examining board to which the affiliated credentialing board is attached. The proposed rule shall be submitted under this subdivision at least 60 days before the proposed rule is submitted to the legislative council staff under s. 227.15 (1).

2. Consider any comments on a proposed rule made by the examining board to which the affiliated credentialing board is attached, if the examining board submits the comments to the affiliated credentialing board within 30 days after a public hearing on the proposed rule under s. 227.18 or, if no hearing is held, within 30 days after the proposed rule is published under s. 227.16 (2) (e).

3. Include, in the report submitted to the legislature under s. 227.19 (2), any comments on the proposed rule submitted by the examining board under subd. 2. and the affiliated credentialing board's responses to those comments.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the affiliated credentialing board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each affiliated credentialing board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each affiliated credentialing board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an affiliated credentialing board shall, unless the member is a full-time salaried employee of this state, be paid a per diem of \$25 for each day on which the member was actually and necessarily engaged in the performance of affiliated credentialing board duties. Each member of an affiliated credentialing board shall be reimbursed for the actual and necessary expenses incurred in the performance of affiliated credentialing board duties.

(8) OFFICIAL OATH. Every member of an affiliated credentialing board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every affiliated credentialing board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the affiliated credentialing board.

(10) SEAL. Every affiliated credentialing board may adopt a seal.

History: 1993 r. 107; 1997 a. 175; 1999 a. 180.

15.09 Councils. (1) SELECTION OF MEMBERS. (a) Unless otherwise provided by law, the governor shall appoint the members of councils for terms prescribed by law. Except as provided in par.(b), fixed terms shall expire on July 1 and shall, if the term is for an even number of years, expire in an odd-numbered year.

(b) The terms of the members of the council on recycling shall expire as specified under s. 15.347 (17) (c).

(2) SELECTION OF OFFICERS. Unless otherwise provided by law, at its first meeting in each year every council shall elect a chairperson,

vice chairperson and secretary from among its members. Any officer may be reelected for successive terms. For any council created under the general authority of s. 15.04 (1) (c), the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which such council is created shall designate an employee of the department or independent agency to serve as secretary of the council and to be a voting member thereof.

(3) LOCATION AND FREQUENCY OF MEETINGS. Unless otherwise provided by law, every council shall meet at least annually and shall also meet on the call of the head of the department or independent agency in which it is created, and may meet at other times on the call of the chairperson or a majority of its members. A council shall meet at such locations as may be determined by it unless the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which it is created determines a specific meeting place.

(4) QUORUM. Except as otherwise expressly provided, a majority of the membership of a council constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the council.

(5) POWERS AND DUTIES. Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

(6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be compensated for their services, but members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an elective or appointive officer or employee of this state who represents an agency as a member of a council to be paid by the agency which pays his or her salary.

(7) REPORTS. Unless a different provision is made by law for transmittal or publication of a report, every council created in a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the council.

(8) OFFICIAL OATH. Each member of a council shall take and file the official oath prior to assuming office.

History: 1971 c. 211; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 34, 346; 1983 a. 27, 388, 410; 1985a.84; 1989 a. 335; 1991 a. 39, 189; 1993 a. 184.

SUBCHAPTER II DEPARTMENTS

15.40 Department of regulation and licensing; creation. There is created a department of regulation and licensing under the direction and supervision of the secretary of regulation and licensing.

History: 1971 c. 270s. 104; 1975 c. 39; 1971 c. 29; 1971 c. 196 s. 131; 1977 c. 418 ss. 24 to 27.

15.405 Same; attached boards and examining boards.

(1) ACCOUNTING EXAMINING BOARD. There is created an accounting examining board in the department of regulation and licensing. The examining board shall consist of 7 members, appointed for staggered 4-year terms. Five members shall hold certificates as certified public accountants and be eligible for licensure to practice in this state. Two members shall be public members.

(2) EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS. There is created an examining board of architects, landscape architects, professional engineers, designers and land surveyors in the department of regulation and licensing. Any professional member appointed to the examining board shall be registered to practice architecture, landscape architecture, professional engineering, the design of engineering systems or land surveying under ch. 443. The examining board shall consist of the following members appointed for 4-year terms: 3 architects, 3 landscape architects, 3 professional engineers, 3 designers, 3 land surveyors and 10 public members.

(a) In operation, the examining board shall be divided into an architect section, a landscape architect section, an engineer section, a designer section and a land surveyor section. Each section shall consist of the 3 members of the named profession appointed to the examining board and 2 public members appointed to the section. The

examining board shall elect its own officers, and shall meet at least twice annually.

(b) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of registration, and all other matters of interest to either the architect, landscape architect, engineer, designer or land surveyor section shall be acted upon solely by the interested section.

(c) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(2m) EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS. (a) There is created in the department of regulation and licensing an examining board of professional geologists, hydrologists and soil scientists consisting of the following members appointed for 4-year terms:

1. Three members who are professional geologists licensed under ch. 470.

2. Three members who are professional hydrologists licensed under ch. 470.

3. Three members who are professional soil scientists licensed under ch. 470.

4. Three public members.

(b) In operation, the examining board shall be divided into a professional geologist section, a professional hydrologist section and a professional soil scientist section. Each section shall consist of the 3 members of the named profession appointed to the examining board and one public member appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(c) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of licenses, and all other matters of interest to either the professional geologist, hydrologist or soil scientist section shall be acted upon solely by the interested section.

(d) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the matter is of interest.

(3) AUCTIONEER BOARD. (a) There is created in the department of regulation and licensing an auctioneer board consisting of the following members appointed for 4-year terms:

1. Four members, each of whom is registered under ch. 480 as an auctioneer, or is an auction company representative, as defined in s. 480.01 (3), of an auction company that is registered under ch. 480 as an auction company.

2. Three public members.

(b) No member of the board may serve more than 2 terms.

(5) CHIROPRACTIC EXAMINING BOARD. There is created a chiropractic examining board in the department of regulation and licensing. The chiropractic examining board shall consist of 6 members, appointed for staggered 4-year terms. Four members shall be graduates from a school of chiropractic and licensed to practice chiropractic in this state. Two members shall be public members. No person may be appointed to the examining board who is in any way connected with or has a financial interest in any chiropractic school.

(59) CONTROLLED SUBSTANCES BOARD. There is created in the department of regulation and licensing a controlled substances board consisting of the attorney general, the secretary of health and family services and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board or a designee; and one psychiatrist and one pharmacologist appointed for 3-year terms.

(6) DENTISTRY EXAMINING BOARD. There is created a dentistry examining board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

(a) Six dentists who are licensed under ch. 447.

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s. 15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

(c) Two public members.

(6m) HEARING AND SPEECH EXAMINING BOARD. There is created a hearing and speech examining board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

(a) Three hearing instrument specialists licensed under subch. I of ch. 459.

(b) One otolaryngologist.

(c) 1. One audiologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One audiologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(d) 1. One speech-language pathologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One speech-language pathologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(e) Two public members. One of the public members shall be a hearing aid user.

(7) MEDICAL EXAMINING BOARD. (a) There is created a medical examining board in the department of regulation and licensing.

(b) The medical examining board shall consist of the following members appointed for staggered 4-year terms:

1. Nine licensed doctors of medicine.

2. One licensed doctor of osteopathy.

3. Three public members.

(c) The chairperson of the patients compensation fund peer review council under s. 655.275 shall serve as a nonvoting member of the medical examining board.

(7c) MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD. (a) There is created a marriage and family therapy, professional counseling, and social work examining board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

1. Four social worker members who are certified or licensed under ch. 457.

2. Three marriage and family therapist members who are licensed under ch. 457.

3. Three professional counselor members who are licensed under ch. 457.

4. Three public members who represent groups that promote the interests of consumers of services provided by persons who are certified or licensed under ch. 457.

(am) The 4 members appointed under par.(a) 1. shall consist of the following:

1. One member who is certified under ch. 457 as an advanced practice social worker.

2. One member who is certified under ch. 457 as an independent social worker.

3. One member who is licensed under ch. 457 as a clinical social worker.

4. At least one member who is employed as a social worker by a federal, state or local governmental agency.

(b) In operation, the examining board shall be divided into a social worker section, a marriage and family therapist section and a professional counselor section. The social worker section shall consist of the 4 social worker members of the examining board and one of the public members of the examining board. The marriage and family therapist section shall consist of the 3 marriage and family therapist members of the examining board and one of the public members of the examining board. The professional counselor section shall consist of the 3 professional counselor members of the examining board and one of the public members of the examining board.

(c) All matters pertaining to granting, denying, limiting, suspending, or revoking a certificate or license under ch. 457, and all other matters of interest to either the social worker, marriage and family therapist, or professional counselor section shall be acted upon solely by the interested section of the examining board.

(d) All matters that the examining board determines are of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(e) Notwithstanding s. 15.08 (4) (a), at a joint meeting of all sections of the examining board, a majority of the examining board constitutes a quorum to do business only if at least 8 members are present at the meeting. At a meeting of a section of the examining board or a joint meeting of 2 or more of the sections of the examining

board, each member who is present has one vote, except as provided in par.(f).

(f) At a joint meeting of the social worker section and one or both of the other sections of the examining board, each member who is present has one vote, except that the social worker members each have three-fourths of a vote if all 4 of those members are present.

(7g) BOARD OF NURSING There is created a board of nursing in the department of regulation and licensing. The board of nursing shall consist of the following members appointed for staggered 4-year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses under ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

(7m) NURSING HOME ADMINISTRATOR EXAMINING BOARD. There is created a nursing home administrator examining board in the department of regulation and licensing consisting of 9 members appointed for staggered 4-year terms and the secretary of health and family services or a designee, who shall serve as a nonvoting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse licensed under ch. 441. Two members shall be public members. No more than 2 members may be officials or full-time employees of this state.

(8) OPTOMETRY EXAMINING BOARD. There is created an optometry examining board in the department of regulation and licensing. The optometry examining board shall consist of 7 members appointed for staggered 4-year terms. Five of the members shall be licensed optometrists in this state. Two members shall be public members.

(9) PHARMACY EXAMINING BOARD. There is created a pharmacy examining board in the department of regulation and licensing. The pharmacy examining board shall consist of 7 members appointed for staggered 4-year terms. Five of the members shall be licensed to practice pharmacy in this state. Two members shall be public members.

(10m) PSYCHOLOGY EXAMINING BOARD. There is created in the department of regulation and licensing a psychology examining board consisting of 6 members appointed for staggered 4-year terms. Four of the members shall be psychologists licensed in this state. Each of the psychologist members shall represent a different specialty area within the field of psychology. Two members shall be public members.

(10r) REAL ESTATE APPRAISERS BOARD. (a) There is created a real estate appraisers board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

1. Three appraisers who are certified or licensed under ch. 458.

2. One assessor, as defined in s. 458.09 (1).

3. Three public members.

(b) Of the appraiser members of the board, one shall be certified under s. 458.06 as a general appraiser, one shall be certified under s. 458.06 as a residential appraiser and one shall be licensed under s. 458.08 as an appraiser. No public member of the board may be connected with or have any financial interest in an appraisal business or in any other real estate-related business. Section 15.08 (1m) (am) applies to the public members of the board. No member of the board may serve more than 2 consecutive terms.

(c) Notwithstanding s. 15.07 (4), a majority of the board constitutes a quorum to do business only if at least 2 of the members present are appraiser members and at least one of the members present is a public member.

(11) REAL ESTATE BOARD. There is created a real estate board in the department of regulation and licensing. The real estate board shall consist of 7 members appointed to staggered 4-year terms. Four of the members shall be real estate broker or salespersons licensed in this state. Three members shall be public members. Section 15.08 (1m) (am) applies to the public members of the real estate board. No member may serve more than 2 terms. The real estate board does not have rule-making authority.

(12) VETERINARY EXAMINING BOARD There is created a veterinary examining board in the department of regulation and licensing. The veterinary examining board shall consist of 8 members appointed for staggered 4-year terms. Five of the members shall be licensed veterinarians in this state. One member shall be a veterinary technician certified in this state. Two members shall be public

members. No member of the examining board may in any way be financially interested in any school having a veterinary department or a course of study in veterinary or animal technology.

(16) FUNERAL DIRECTORS EXAMINING BOARD. There is created a funeral directors examining board in the department of regulation and licensing. The funeral directors examining board shall consist of 6 members appointed for staggered 4-year terms. Four members shall be licensed funeral directors under ch. 445 in this state. Two members shall be public members.

(17) BARBERING AND COSMETOLOGY EXAMINING BOARD. There is created a barbering and cosmetology examining board in the department of regulation and licensing. The barbering and cosmetology examining board shall consist of 9 members appointed for 4-year terms. Four members shall be licensed barbers or cosmetologists, 2 members shall be public members, one member shall be a representative of a private school of barbering or cosmetology, one member shall be a representative of a public school of barbering or cosmetology and one member shall be a licensed electrologist. Except for the 2 members representing schools, no member may be connected with or have any financial interest in a barbering or cosmetology school.

History: 1973 c. 90, 156; 1975 c. 39, 86, 199, 200, 383, 422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27, 403, 485, 538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264, 265, 316; 1989 a. 316, 340; 1991 a. 39, 78, 160, 189, 269; 1993 a. 16, 102, 463, 465, 491; 1995 a. 27 s. 9126(19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321, 417; 1997 a. 96, 252, 300; 2001 a. 16, 80.

A medical school instructor serving without compensation is ineligible to serve on the board of medical examiners. 62 Atty. Gen. 193.

An incumbent real estate examining board member is entitled to hold over in office until a successor is duly appointed and confirmed by the senate. The board was without authority to reimburse the nominee for expenses incurred in attending a meeting during an orientation period prior to confirmation. 63 Atty. Gen. 192.

15.406 Same; attached affiliated credentialing boards.

(1) PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a physical therapists affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Three physical therapists who are licensed under subch. III of ch. 448.

(am) One physical therapist assistant licensed under subch. III of ch. 448.

Note: Par. (am) is created eff. 4-1-04 by 2001 Wis. Act 70.

(b) One public member.

(2) DIETITIANS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a dietitians affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Three dietitians who are certified under subch. V of ch. 448.

(b) One public member.

(3) PODIATRISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a podiatrists affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Three podiatrists who are licensed under subch. IV of ch. 448.

(b) One public member.

(4) ATHLETIC TRAINERS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an athletic trainers affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Four athletic trainers who are licensed under subch. VI of ch. 448 and who have not been issued a credential in athletic training by a governmental authority in a jurisdiction outside this state. One of the athletic trainer members may also be licensed under ch. 446 or 447 or subch. II, III or IV of ch. 448.

(b) One member who is licensed to practice medicine and surgery under subch. II of ch. 448 and who has experience with athletic training and sports medicine.

(c) One public member.

(5) OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an occupational therapists affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Three occupational therapists who are licensed under subch. VII of ch. 448.

(b) Two occupational therapy assistants who are licensed under subch. VI of ch. 448.

(c) Two public members.

History: 1993 a. 107, 443; 1997 a. 75, 175; 1999 a. 9, 180, 2001 a. 70.

15.407 Same; councils. (1m) RESPIRATORY CARE PRACTITIONERS EXAMINING COUNCIL. There is created a respiratory care practitioners examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity in the formulating of rules to be promulgated by the medical examining board for the regulation of respiratory care practitioners. The respiratory care practitioners examining council shall consist of 3 certified respiratory care practitioners, each of whom shall have engaged in the practice of respiratory care for at least 3 years preceding appointment, one physician and one public member. The respiratory care practitioner and physician members shall be appointed by the medical examining board. The members of the examining council shall serve 3-year terms. Section 15.08 (1) to (4) (a) and (6) to (10) shall apply to the respiratory care practitioners examining council.

(2) COUNCIL ON PHYSICIAN ASSISTANTS. There is created a council on physician assistants in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council's membership shall consist of

(a) The vice chancellor for health sciences of the University of Wisconsin-Madison or the vice chancellor's designee.

(b) One public member appointed by the governor for a 2-year term.

(c) Three physician assistants selected by the medical examining board for staggered 2-year terms.

(2m) PERFUSIONISTS EXAMINING COUNCIL. There is created a perfusionists examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council shall consist of the following members appointed for 3-year terms:

(a) Three licensed perfusionists appointed by the medical examining board.

(b) One physician who is a cardiothoracic surgeon or a cardiovascular anesthesiologist and who is appointed by the medical examining board.

(c) One public member appointed by the governor.

(3) EXAMINING COUNCILS; BOARD OF NURSING. The following examining councils are created in the department of regulation and licensing to serve the board of nursing in an advisory capacity. Section 15.08 (1) to (4) (a) and (6) to (10), applies to the examining councils.

(a) Registered nurses. There is created an examining council on registered nurses to consist of 4 registered nurses of not less than 3 years' experience in nursing, appointed by the board of nursing for staggered 4-year terms.

(b) Practical nurses. There is created an examining council on licensed practical nurses to consist of one registered nurse, 3 licensed practical nurses and one registered nurse who is a faculty member of an accredited school for practical nurses, appointed by the board of nursing for staggered 3-year terms. No member may be a member of the examining council on registered nurses.

(4) COUNCIL ON SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY. There is created a council on speech-language pathology and audiology in the department of regulation and licensing and serving the hearing and speech examining board in an advisory capacity. The council shall consist of the following members appointed for 3-year terms:

(a) Three speech-language pathologists licensed under subch. III of ch. 459.

(b) Two audiologists licensed under subch. II of ch. 459.

(5) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS. There is created in the department of regulation and licensing a council on real estate curriculum and examinations consisting of 7 members appointed for 4-year terms. Five members shall be real estate brokers or salespersons licensed under ch. 452 and 2 members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate board appointed by the real estate board, at least 2 members shall be

licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall be a licensed real estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years of experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

(6) PHARMACIST ADVISORY COUNCIL. There is created a pharmacist advisory council in the department of regulation and licensing and serving the pharmacy examining board in an advisory capacity. The council shall consist of the following members appointed for 3-year terms:

(a) Two pharmacists licensed under ch. 450 appointed by the chairperson of the pharmacy examining board.

(b) One physician licensed under subch. III of ch. 448 appointed by the chairperson of the medical examining board.

(c) One nurse licensed under ch. 441 appointed by the chairperson of the board of nursing.

(7) MESSAGE THERAPY AND BODYWORK COUNCIL. (a) There is created a message therapy and bodywork council in the department of

regulation and licensing, serving the department in an advisory capacity. The council shall consist of 7 members, appointed for 4-year terms, who are message therapists or bodyworkers certified under ch. 460 and who have engaged in the practice of message therapy or bodywork for at least 2 years preceding appointment.

(b) In appointing members under par.(a), the governor shall ensure, to the maximum extent practicable, that the membership of the council is diverse, based on all of the following factors:

1. Message or bodywork therapies practiced in this state.

2. Affiliation and nonaffiliation with a professional association for the practice of message therapy or bodywork.

3. Professional associations with which message therapists or bodyworkers in this state are affiliated.

4. Practice in urban and rural areas in this state.

Note: Sub. (7) is created eff. 3-1-03 by 2001 Wis. Act 74.

History: 1973 c. 149; 1975 c. 39, 86, 199, 383, 422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 229, 316, 341, 359; 1991 a. 316; 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 727m; 1999 a. 32, 180, 186; 2001 a. 74, 89.

**CHAPTER 19
GENERAL DUTIES OF PUBLIC OFFICIALS**

**SUBCHAPTER II
PUBLIC RECORDS AND PROPERTY**

19.34 Procedural information.

19.34 Procedural information. (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2) (a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

1. Permit access to its records upon at least 48 hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least 2 consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy a record.

(c) An authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub.(1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to a location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

History: 1981 c. 335.

CHAPTER 48 CHILDREN'S CODE

SUBCHAPTER XX MISCELLANEOUS PROVISIONS

48.983 Abused or neglected children and abused unborn children.

SUBCHAPTER XX MISCELLANEOUS PROVISIONS

48.981 Abused or neglected children and abused unborn children. (1) DEFINITIONS In this section:

(ag) "Agency" means a county department, the department in a county having a population of 500,000 or more or a licensed child welfare agency under contract with a county department or the department in a county having a population of 500,000 or more to perform investigations under this section.

(am) "Caregiver" means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons:

1. The child's parent, grandparent, great-grandparent, stepparent, brother, sister, stepbrother, stepsister, half brother, or half sister.

2. The child's guardian.

3. The child's legal custodian.

4. A person who resides or has resided regularly or intermittently in the same dwelling as the child.

5. **An** employee of a residential facility or residential care center for children and youth in which the child was or is placed.

6. A person who provides or has provided care for the child in or outside of the child's home.

7. Any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.

8. Any relative of the child other than a relative specified in subd.1.

(b) "Community placement" means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35 (1); conditional transfer or discharge under s. 51.37 (9); placement in a Type 2 child caring institution or a Type 2 secured correctional facility authorized under s. 938.539 (5); conditional release under s. 971.17; supervised release under s. 980.06 or 980.08; participation in the community residential confinement program under s. 301.046, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534 or the serious juvenile offender program under s. 938.538; or any other placement of an adult or juvenile offender in the community under the custody or supervision of the department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over the offender.

(cs) "Indian child" means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.

2. As a person who is both eligible for membership in the tribe or band and is the biological child of a member of the tribe or band.

(ct) "Indian unborn child" means an unborn child who, when born, may be eligible for affiliation with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.

2. As a person who is both eligible for membership in the tribe or band and the biological child of a member of the tribe or band.

(d) "Neglect" means failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

(f) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(fm) "Relative" means a parent, grandparent, great-grandparent, stepparent, brother, sister, first cousin, 2nd cousin, nephew, niece, uncle, aunt, step-grandparent, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, step-uncle, or step-aunt.

(g) "Reporter" means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur under this section.

(h) "Subject" means a person or unborn child named in a report or record as any of the following:

1. A child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect. 1m. **An** unborn child who is the victim or alleged victim of abuse or who is at substantial risk of abuse.

2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child or to have abused an unborn child.

(i) "Tribal agent" means the person designated under 25 CFR 23.12 by an Indian tribe or band to receive notice of involuntary child custody proceedings under the Indian child welfare act, 25 USC 1901 to 1963.

(2) PERSONS REQUIRED TO REPORT. (a) [, group home, as described in s. 48.625 (1m),] Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as provided in sub. (3):

NOTE: The bracketed language was inserted into s. 48.981 (2) by 2001 Wis. Act 69, but was not taken into account by the treatment of s. 48.981 (2) by 2001 Wis. Act 103. Corrective legislation to move the language to its correct location in subd. 18. is pending.

1. A physician.

2. A coroner.

3. A medical examiner.

4. A nurse.

5. A dentist.

6. A chiropractor.

7. An optometrist.

8. An acupuncturist.

9. A medical or mental health professional not otherwise specified in this paragraph.

10. A social worker.

11. A marriage and family therapist.

12. A professional counselor.

13. A public assistance worker, including a financial and employment planner, as defined in s. 49.141 (1) (d).

14. A school teacher.

15. A school administrator

16. A school counselor.

17. A mediator under s. 767.11.

18. A child-care worker in a day care center [, group home, as described in s. 48.625 (1m),] or residential care center for children and youth.

NOTE: The bracketed language was inserted into s. 48.981 (2) by 2001 Wis. Act 69, but was not taken into account by the treatment of s. 48.981 (2) by 2001 Wis. Act 103. Corrective legislation to move the language to its correct location in subd. 18. is pending.

19. A day care provider.

20. **An** alcohol or other drug abuse counselor.

21. A member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42, or 51.437 or a residential care center for children and youth.

22. A physical therapist. 22m. A physical therapist assistant.

NOTE: 2001 Wis. Act 70 creates the term "physical therapist assistant" and provides for the licensing of physical therapist assistants effective 4-1-04.

23. An occupational therapist.

24. A dietitian.

25. A speech-language pathologist.
26. An audiologist.
27. An emergency medical technician.
28. A first responder.
29. A police or law enforcement officer.

(b) A court-appointed special advocate who has reasonable cause to suspect that a child seen in the course of activities under s. 48.236 (3) has been abused or neglected or who has reason to believe that a child seen in the course of those activities has been threatened with abuse and neglect and that abuse or neglect of the child will occur shall, except as provided in sub. (2m), report as provided in sub. (3).

(c) Any person not otherwise specified in par. (a) or (b), including an attorney, who has reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).

(d) Any person, including an attorney, who has reason to suspect that an unborn child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3).

(e) No person making a report under this subsection may be discharged from employment for so doing.

(2m) EXCEPTION TO REPORTING REQUIREMENT. (a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

1. "Health care provider" means a physician, as defined under s. 448.01 (5), a physician assistant, as defined under s. 448.01 (6), or a nurse holding a certificate of registration under s. 441.06 (1) or a license under s. 441.10 (3).

2. "Health care service" means family planning services, as defined in s. 253.07 (1) (b), 1995 stats., pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02 (1) (b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par. (d), a person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

(3) REPORTS; INVESTIGATION. (a) Referral of report. 1. A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department or the sheriff or city, village, or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or of unborn child abuse or to a belief that abuse or neglect will occur.

2. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under

contract with the department all cases reported to it. The county department, department, or licensed child welfare agency may require that a subsequent report be made in writing.

3. A county department, the department, or a licensed child welfare agency under contract with the department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the sheriff or police department all cases of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), reported to it. For cases of suspected or threatened abuse, as defined in s. 48.02 (1) (a), (am), or (gm), or neglect, each county department, the department, and a licensed child welfare agency under contract with the department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

4. If the report is of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), the sheriff or police department and the county department, department, or licensed child welfare agency under contract with the department shall coordinate the planning and execution of the investigation of the report.

(b) Duties of local law enforcement agencies. 1. Any person reporting under this section may request an immediate investigation by the sheriff or police department if the person has reason to suspect that the health or safety of a child or of an unborn child is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is reason to believe that the health or safety of the child or unborn child is in immediate danger and take any necessary action to protect the child or unborn child.

2. If the investigating officer has reason under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. to take a child into custody, the investigating officer shall take the child into custody and deliver the child to the intake worker under s. 48.20. 2m. If the investigating officer has reason under s. 48.193 (1) (c) or (d) 2. to take the adult expectant mother of an unborn child into custody, the investigating officer shall take the adult expectant mother into custody and deliver the adult expectant mother to the intake worker under s. 48.203.

3. If the sheriff or police department determines that criminal action is necessary, the sheriff or police department shall refer the case to the district attorney for criminal prosecution. Each sheriff and police department shall adopt a written policy specifying the kinds of reports of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), that the sheriff or police department will routinely refer to the district attorney for criminal prosecution.

(bm) Notice of report to Indian tribal agent. In a county which has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe, if a county department which receives a report under par. (a) pertaining to a child or unborn child knows that the child is an Indian child who resides in the county or that the unborn child is an Indian unborn child whose expectant mother resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child or expectant mother and the fact that a report has been received about that child or unborn child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, and it is a Wisconsin tribe or band, the tribal agent of that tribe or band.

2. If the county department does not know with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, or the child or expectant mother is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Ho-Chunk service area where the child or expectant mother resides.

3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Ho-Chunk service area in the county.

(c) Duties of county departments. 1. Within 24 hours after receiving a report under par. (a), the agency shall, in accordance with the authority granted to the department under s. 48.48 (17) (a) 1. or the county department under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child or unborn child is in need of protection or services. The investigation shall be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations or unborn child abuse investigations. If the investigation is of a report of child abuse or neglect or of threatened child abuse or neglect by a caregiver specified in sub. (1) (am) 5. to 8. who continues to have access to the child or a caregiver specified in Sub. (1) (am) 1. to 4., or of a report that does not disclose who is suspected of the child abuse or

neglect and in which the investigation does not disclose who abused or neglected the child, the investigation shall also include observation of or an interview with the child, or both, and, if possible, an interview with the child's parents, guardian or legal custodian. If the investigation is of a report of child abuse or neglect or threatened child abuse or neglect by a caregiver who continues to reside in the same dwelling as the child, the investigation shall also include, if possible, a visit to that dwelling. At the initial visit to the child's dwelling, the person making the investigation shall identify himself or herself and the agency involved to the child's parents, guardian or legal custodian. The agency may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child's dwelling only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

2. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the child's best interest in terms of physical safety and physical health to remove the child from his or her home for immediate protection, he or she shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any child in the home requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

2m. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the best interest of the unborn child in terms of physical safety and physical health to take the expectant mother into custody for the immediate protection of the unborn child, he or she shall take the expectant mother into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any unborn child requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the expectant mother of the unborn child into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

3. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines that a child, any member of the child's family or the child's guardian or legal custodian is in need of services or that the expectant mother of an unborn child is in need of services, the county department, department or licensed child welfare agency shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian or the expectant mother refuses to accept the services, the county department, department or licensed child welfare agency may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services or that a petition be filed under s. 48.133 alleging that the unborn child who is the subject of the report is in need of protection or services.

4. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of

disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall give due regard to the culture of the subjects. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The agency shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents, guardian or legal custodian of the child or to any expectant mother of an unborn child. The agency shall update the record every 6 months until the case is closed.

5m. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department or licensed child welfare agency, within 15 days after the date of the determination, shall notify the person in writing of the determination, the person's right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by the department under this subdivision. The department shall promulgate rules establishing procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal under this subdivision to be held in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect.

6. The agency shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

6m. If a person who is not required under sub. (2) to report makes a report and is a relative of the child, other than the child's parent, or is a relative of the expectant mother of the unborn child, that person may make a written request to the agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report. An agency that receives a written request under this subdivision shall, within 60 days after it receives the report or 20 days after it receives the written request, whichever is later, inform the reporter in writing of what action, if any, was taken to protect the health and welfare of the child or unborn child, unless a court order prohibits that disclosure, and of the duty to keep the information confidential under sub. (7)(e) and the penalties for failing to do so under sub. (7)(f). The agency may petition the court ex parte for an order prohibiting that disclosure and, if the agency does so, the time period within which the information must be disclosed is tolled on the date the petition is filed and remains tolled until the court issues a decision. The court may hold an ex parte hearing in camera and shall issue an order granting the petition if the court determines that disclosure of the information would not be in the best interests of the child or unborn child.

7. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human services agencies to prevent, identify and treat child abuse and neglect and unborn child abuse. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall coordinate the development and provision of services to abused and neglected children, to abused unborn children to families in which child abuse or neglect has occurred, to expectant mothers who have abused their unborn children, to children and families when circumstances justify a belief that abuse or neglect will occur and to the expectant mothers of unborn children when circumstances justify a belief that unborn child abuse will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with

the county department conducts. Using the format prescribed by the department, a licensed child welfare agency under contract with the department shall provide the department with information about each report that the child welfare agency receives and about each investigation that the child welfare agency conducts. This information shall be used by the department to monitor services provided by county departments or licensed child welfare agencies under contract with county departments or the department. The department shall use non-identifying information to maintain statewide statistics on child abuse and neglect and on unborn child abuse, and for planning and policy development purposes.

9. The agency may petition for child abuse restraining orders and injunctions under s. 48.25 (6).

(cm) Contract with licensed child welfare agencies. A county department may contract with a licensed child welfare agency to fulfill the county department's duties specified under par. (c) 1., 2.b., 2m.b., 5., 6., 6m. and 8. The department may contract with a licensed child welfare agency to fulfill the department's duties specified under par. (c) 1., 2.a., 2m.b., 3., 4., 5., 5m., 6., 6m., 7., 8. and 9. in a county having a population of 500,000 or more. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department or the department contracts.

(d) **Independent investigation.** 1. In this paragraph, "agent" includes, but is not limited to, a foster parent, treatment foster parent or other person given custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 or by a child welfare agency who is working with a child or an expectant mother of an unborn child under contract with or under the supervision of the department in a county having a population of 500,000 or more or a county department under s. 46.22.

2. If an agent or employee of an agency required to investigate under this subsection is the subject of a report, or if the agency determines that, because of the relationship between the agency and the subject of a report, there is a substantial probability that the agency would not conduct an unbiased investigation, the agency shall, after taking any action necessary to protect the child or unborn child, notify the department. Upon receipt of the notice, the department, in a county having a population of less than 500,000 or a county department or child welfare agency designated by the department in any county shall conduct an independent investigation. If the department designates a county department under s. 46.22, 46.23, 51.42 or 51.437, that county department shall conduct the independent investigation. If a licensed child welfare agency agrees to conduct the independent investigation, the department may designate the child welfare agency to do so. The powers and duties of the department or designated county department or child welfare agency making an independent investigation are those given to county departments under par. (c).

(4) **IMMUNITY FROM LIABILITY.** Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child or of an expectant mother under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed. The immunity provided under this subsection does not apply to liability for abusing or neglecting a child or for abusing an unborn child.

(5) **CORONER'S REPORT.** Any person or official required to report cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report the findings to the appropriate district attorney; to the department or, in a county having a population of 500,000 or more, to a licensed child welfare agency under contract with the department; to the county department and, if the institution making the report initially is a hospital, to the hospital.

(6) **PENALTY.** Whoever intentionally violates this section by failure to report as required may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(7) **CONFIDENTIALITY.** (a) All reports made under this section, notices provided under sub. (3) (bm) and records maintained by an agency and other persons, officials and institutions shall be confidential. Reports and records may be disclosed only to the following persons:

1. The subject of a report, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

1m. A reporter described in sub. (3) (c) 6m. who makes a written request to an agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report, unless a court order under sub. (3) (c) 6m. prohibits disclosure of that information to that reporter, except that the only information that may be disclosed is information in the record regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

2. Appropriate staff of an agency or a tribal social services department.

2m. A person authorized to provide or providing intake or dispositional services for the court under s. 48.067, 48.069 or 48.10.

2r. A person authorized to provide or providing intake or dispositional services under s. 938.067, 938.069 or 938.10.

3. An attending physician for purposes of diagnosis and treatment.

3m. A child's parent, guardian or legal custodian or the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4. A child's foster parent, treatment foster parent or other person having physical custody of the child or a person having physical custody of the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

5. A professional employee of a county department under s. 51.42 or 51.437 who is working with the child or the expectant mother of the unborn child under contract with or under the supervision of the county department under s. 46.22 or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6. A multidisciplinary child abuse and neglect or unborn child abuse team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6m. A person employed by a child advocacy center recognized by the county board, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department, to the extent necessary to perform the services for which the center is recognized by the county board, the county department, the department or the licensed child welfare agency.

8. A law enforcement officer or law enforcement agency or a district attorney for purposes of investigation or prosecution.

8m. The department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over a person who is subject to community placement for purposes of investigating or providing services to a person who is subject to community placement and who is the subject of a report. In making its investigation, the department of corrections, department of health and family services, county department or other person shall cooperate with the agency making the investigation under sub. (3) (c) or (d).

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. A court conducting proceedings under s. 48.21 or 48.213, a court conducting proceedings related to a petition under s. 48.13, 48.133 or 48.42 or a court conducting dispositional proceedings under subch. VI or VIII in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10g. A court conducting proceedings under s. 48.21, a court conducting proceedings related to a petition under s. 48.13 (3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10j. A court conducting proceedings under s. 938.21, a court conducting proceedings relating to a petition under ch. 938 or a

court conducting dispositional proceedings under subch. VI of ch. 938 in which abuse or neglect of the child who is the subject of the report or record is an issue.

10m. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children and unborn children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10r. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

11. The county corporation counsel or district attorney representing the interests of the public, the agency legal counsel and the counsel or guardian ad litem representing the interests of a child in proceedings under subd.10., 10g. or 10j. and the guardian ad litem representing the interests of an unborn child in proceedings under subd.10.

11n. An attorney representing the interests of an Indian tribe or band in proceedings under subd. 10m. or 10r., of an Indian child in proceedings under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd. 10m.

11r. A volunteer court-appointed special advocate designated under s. 48.236 (1) or person employed by a court-appointed special advocate program recognized by the chief judge of a judicial administrative district under s. 48.07 (5), to the extent necessary for the court-appointed special advocate to perform the advocacy services specified in s. 48.236 (3) that the court-appointed special advocate was designated to perform in proceedings related to a petition under s. 48.13.

12. A person engaged in bona fide research, with the permission of the department. Information identifying subjects and reporters may not be disclosed to the researcher.

13. The department, a county department under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency ordered to conduct a screening or an investigation of a stepparent under s. 48.88 (2) (c).

14. A grand jury if it determines that access to specified records is necessary for the conduct of its official business. 14m. A judge conducting proceedings under s. 968.26.

15. A child fatality review team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

15g. A citizen review panel established or designated by the department or a county department.

15m. A coroner, medical examiner or pathologist or other physician investigating the cause of death of a child whose death is unexplained or unusual or is associated with unexplained or suspicious circumstances.

17. A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.

(am) Notwithstanding par. (a) (intro.), a tribal agent who receives notice under sub. (3) (bm) may disclose the notice to a tribal social services department.

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.24 or 767.325 or in an adoption proceeding under s. 48.833, 48.835, 48.837 or 48.839 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) Notwithstanding par. (a), an agency may disclose information from its records for use in proceedings under s. 48.25 (6), 813.122 or 813.125.

(cr) 1. Notwithstanding par. (a) and subject to subd.3., an agency may disclose to the general public a written summary of the information specified in subd.2. relating to any child who has died

or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section if any of the following circumstances apply:

a. A person has been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, or the district attorney indicates that a person who is deceased would have been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, but for the fact that the person is deceased.

b. A judge, district attorney, law enforcement officer, law enforcement agency or any other officer or agency whose official duties include the investigation or prosecution of crime has previously disclosed to the public, in the performance of the official duties of the officer or agency, that the suspected abuse or neglect of the child has been investigated under sub. (3) or that child welfare services have been provided to the child or the child's family under this chapter.

c. A parent, guardian or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information specified in subd.2.

2. If an agency is permitted to disclose information under subd.1. relating to a child who has died or been placed in serious or critical condition as a result of any suspected abuse or neglect that has been reported under this section, the agency may disclose all of the following information from its records:

a. A description of any investigation made by the agency in response to the report of the suspected abuse or neglect, a statement of the determination made by the agency under sub. (3) (c) 4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

b. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report, a statement of the determination made by the agency under sub. (3) (c) 4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

c. Whether the child or the child's family has received any services under this chapter prior to the report of suspected abuse or neglect that caused the child's death or serious or critical condition or any previous report of suspected or threatened abuse or neglect.

3. An agency may not disclose any of the information described in subd.2. if any of the following applies:

a. The agency determines that disclosure of the information would be contrary to the best interests of the child who is the subject of the report, the child's siblings or any other child residing in the same dwelling as the child who is the subject of the report or that disclosure of the information is likely to cause mental, emotional or physical harm or danger to the child who is the subject of the report, the child's siblings, any other child residing in the same dwelling as the child who is the subject of the report or any other person.

b. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

c. The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of such a proceeding.

d. Disclosure of the information is not authorized by state law or rule or federal law or regulation.

e. The investigation under sub. (3) of the report of the suspected abuse or neglect has not been completed, in which case the agency may only disclose that the report is under investigation.

f. Disclosure of the information would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, and information that would reveal

the identity of those persons has not previously been disclosed to the public.

g. Disclosure of the information would reveal the identity of a reporter or any other person who provides information relating to the suspected abuse or neglect of the child.

4. Any person who requests the information specified in subd.2. under the circumstances specified in subd.1. and whose request is denied may petition the court to order the disclosure of that information. On receiving a petition under this subdivision, the court shall notify the agency, the district attorney, the child and the child's parent, guardian or legal custodian of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence and hear argument relating to the disclosure of the information. The court shall make an in camera inspection of the information sought to be disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances specified in subd.3. apply.

5. Any person acting in good faith in disclosing or refusing to disclose the information specified in subd.2. under the circumstances specified in subd.1. is immune from any liability, civil or criminal, that may result by reason of that disclosure or nondisclosure. For purposes of any proceeding, civil or criminal, the good faith of a person in disclosing or refusing to disclose the information specified in subd.2. under the circumstances specified in subd.1. shall be presumed.

(d) Notwithstanding par. (a), the department may have access to any report or record maintained by an agency under this section.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(8) EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION. (a) The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more to the extent feasible shall conduct continuing education and training programs for staff of the department, the county departments, licensed child welfare agencies under contract with the department or a county department, law enforcement agencies, and the tribal social services departments, persons and officials required to report, the general public, and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect and of unborn child abuse, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation, and coordination in the identification, prevention, and treatment of child abuse and neglect and of unborn child abuse. Programs provided for staff of the department, county departments, and licensed child welfare agencies under contract with county departments or the department whose responsibilities include the investigation or treatment of child abuse or neglect shall also be designed to provide information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more shall develop public information programs about child abuse and neglect and about unborn child abuse.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect and in unborn child abuse, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases and with unborn child abuse cases. These procedures and capabilities may include, but are not limited to, receipt, investigation and verification of reports; determination of treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department, a county department or a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more may contract with any public or private organization which meets the standards set by the department. In entering into the contracts the department, county department or licensed child welfare agency shall give priority to parental organizations combating child abuse and neglect or unborn child abuse.

(d) 1. Each agency staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect or of unborn child abuse shall successfully complete training in child abuse and neglect protective services and in unborn child abuse protective services approved by the department. The training shall include information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. Each year the department shall make available training programs that permit intake workers and agency staff members and supervisors to satisfy the requirements under subd.1. and s. 48.06 (1) (am) 3. and (2) (c).

(9) ANNUAL REPORTS. Annually, the department shall prepare and transmit to the governor, and to the legislature under s.

13.172 (2), a report on the status of child abuse and neglect programs and on the status of unborn child abuse programs. The report shall include a full statistical analysis of the child abuse and neglect reports, and the unborn child abuse reports, made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

(10) CURRENT LIST OF TRIBAL AGENTS. The department shall annually provide to each agency described in sub. (3) (bm) (intro.) a current list of all tribal agents in the state.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105.

Even if the authority for a warrantless search can be inferred from ch. 48, those provisions cannot supercede the constitutional provisions prohibiting unreasonable searches and seizures. State v. Boggess, 115 Wis. 2d 443, 340 N.W.2d 516 (1983).

Section 48.981, 1983 stats., is not unconstitutionally vague. State v. Hurd, 135 Wis. 2d 266, 400 N.W.2d 42 (Ct. App. 1986).

Immunity under sub. (4) extends to reporters who report the necessary information to another who they expect to and who does report to proper authorities. Investigating the allegation prior to reporting does not run afoul of the immediate reporting requirement of sub. (3) and does not affect immunity. Allegations of negligence by reporters are not sufficient to challenge the good faith requirement of sub. (4). Phillips v. Behnke, 192 Wis. 2d 552, 531 N.W.2d 619 (Ct. App. 1995).

To overcome the presumption of good faith under sub. (4), more than a violation of sub. (3) is required. It must also be shown that the violation was "conscious" or "intentional." Drake v. Huber, 218 Wis. 2d 672, 582 N.W.2d 74 (Ct. App. 1998).

This section provides no basis for civil liability against a person who may, but is not required to, report abuse. Gritzner v. Michael R. 2000 WI 68, 235 Wis. 2d 781, 611 N.W.2d 906.

To "disclose" information under sub. (7), the recipient must have been previously unaware of the information at the time of the communication. The state has the burden to prove beyond a reasonable doubt that the disclosure took place. Sub. (7) is a strict liability statute: intent is not an element of a violation. State v. Polashek, 2002 WI 74, ___ Wis. 2d ___, 646 N.W.2d 330.

The duty to report suspected cases of child abuse or neglect under s. 48.981 (3) (a) prevails over any inconsistent terms in s. 51.30. 68 Att'y. Gen. 342.

Consensual sexual conduct involving a 16 and 17 year old does not constitute child abuse. 72 Att'y. Gen. 93.

Medical or mental health professionals may report suspected child abuse under the permissive provisions of sub. (2) when the abuser, rather than victim, is seen in the course of professional duties. Section 51.30 does not bar such reports made in good faith. 76 Att'y. Gen. 39.

Contracting out for services under this section is discussed. 76 Att'y. Gen. 286. Disclosure under sub. (7) (a) 1. and (c) is mandatory. 77 Att'y. Gen. 84.

The responsibility of county departments of social services to investigate allegations of child abuse and neglect is discussed. Department staff members may interview a child on public school property and may exclude school personnel from the interview. School personnel cannot condition on-site interviews on notification of the child's parents. 79 Att'y. Gen. 48.

Members of a social services board in a county with a county executive or a county administrator may be granted access to child abuse and neglect files under s. 48.981 if access is necessary for the performance of their statutory duties. 79 Att'y. Gen. 212.

A district attorney or corporation counsel may reveal the contents of a report made under s. 48.981 in the course of a criminal prosecution or one of the civil proceedings enumerated under sub. (7) (a) 10. 81 Att'y. Gen. 66.

County departments have authority to transport a child to a county-recognized child advocacy center for the purpose of an investigatory interview without consent of the primary caretaker, if to do so is necessary to an investigation of alleged child maltreatment. OAG 3-98.

The confrontation clause does not require a defendant's access to confidential child abuse reports; due process requires that the court undertake an in camera inspection of the file to determine whether it contains material exculpatory evidence. Pennsylvania v. Ritchie, 480 U.S. 39 (1987).

This section does not authorize a private cause of action for failure to report. Isley v. Capucian Province, 880 F. Supp. 1138 (1995).

CHAPTER 146

MISCELLANEOUS HEALTH PROVISIONS

146.81 Health care records; definitions.
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 146.995 Reporting of wounds and burn injuries.
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146.81 Health care records; definitions. In ss. 146.81 to 146.84:

- (1) "Health care provider" means any of the following:
 - (a) A nurse licensed under ch. 441.
 - (b) A chiropractor licensed under ch. 446.
 - (c) A dentist licensed under ch. 447.
 - (d) A physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448.
 - (dg) A physical therapist licensed under subch. III of ch. 448.
 - (dr) A podiatrist licensed under subch. IV of ch. 448.
 - (em) A dietitian certified under subch. V of ch. 448.
 - (eq) An athletic trainer licensed under subch. VI of ch. 448.
 - (es) An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.
 - (f) An optometrist licensed under ch. 449.
 - (fm) A pharmacist licensed under ch. 450.
 - (g) An acupuncturist certified under ch. 451.
 - (h) A psychologist licensed under ch. 455.
 - (hg) A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.
 - (hm) A speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.
 - (hp) A massage therapist or bodyworker certified under ch. 460.
- NOTE: Par.(hp) is shown as amended eff. 3-1-03 by 2001 Wis. Act 74. Prior to 3-1-03 it reads:**
- (hp) A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.
 - (i) A partnership of any providers specified under pars.(a) to (hp).
 - (j) A corporation or limited liability company of any providers specified under pars.(a) to (hp) that provides health care services.
 - (k) An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.
 - (L) A hospice licensed under subch. IV of ch. 50.
 - (m) An inpatient health care facility, as defined in s. 50.135 (1).
 - (n) A community-based residential facility, as defined in s. 50.01 (1g).
 - (p) A rural medical center, as defined in s. 50.50(11).

(2) "Informed consent" means written consent to the disclosure of information from patient health care records to an individual, agency or organization that includes all of the following:

- (a) The name of the patient whose record is being disclosed.
- (b) The type of information to be disclosed.
- (c) The types of health care providers making the disclosure.
- (d) The purpose of the disclosure such as whether the disclosure is for further medical care, for an application for insurance, to obtain payment of an insurance claim, for a disability determination, for a vocational rehabilitation evaluation, for a legal investigation or for other specified purposes.
- (e) The individual, agency or organization to which disclosure may be made.

(f) The signature of the patient or the person authorized by the patient and, if signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person.

(g) The date on which the consent is signed.
 (h) The time period during which the consent is effective.
 (3) "Patient" means a person who receives health care services from a health care provider.

(4) "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health

care provider, including the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), fetal monitor tracings, as defined under s. 146.817 (1), or a pupil's physical health records maintained by a school under s. 118.125. "Patient health care records" also includes health summary forms prepared under s. 302.388 (2).

(5) "Person authorized by the patient" means the parent, guardian or legal custodian of a minor patient, as defined in s. 48.02 (8) and (11), the person vested with supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m) or (4n), the guardian of a patient adjudged incompetent, as defined in s. 880.01 (3) and (4), the personal representative or spouse of a deceased patient, any person authorized in writing by the patient or a health care agent designated by the patient as a principal under ch. 155 if the patient has been found to be incapacitated under s. 155.05 (2), except as limited by the power of attorney for health care instrument. If no spouse survives a deceased patient, "person authorized by the patient" also means an adult member of the deceased patient's immediate family, as defined in s. 632.895 (1) (d). A court may appoint a temporary guardian for a patient believed incompetent to consent to the release of records under this section as the person authorized by the patient to decide upon the release of records, if no guardian has been appointed for the patient.

History: 1979 c. 221; 1981 c. 39 s. 22; 1983 a. 27; 1983 a. 189 s. 329 (1); 1983 a. 535; 1985 a. 315; 1987 a. 27, 70, 264; 1987 a. 399 ss. 403br, 404; 1987 a. 403; 1989 a. 31, 168, 199, 200, 229, 316, 359; 1991 a. 39, 160, 269; 1993 a. 27, 32, 105, 112, 183, 385, 443, 496; 1995 a. 27 s. 9145 (1); 1995 a. 77, 98, 352; 1997 a. 27, 67, 75, 156, 175; 1999 a. 9, 32, 151, 180, 188; 2001 a. 38, 70, 74, 80, 89.

146.815 Contents of certain patient health care records.

(1) Patient health care records maintained for hospital inpatients shall include, if obtainable, the inpatient's occupation and the industry in which the inpatient is employed at the time of admission, plus the inpatient's usual occupation.

(2) (a) If a hospital inpatient's health problems may be related to the inpatient's occupation or past occupations, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(b) If a hospital inpatient's health problems may be related to the occupation or past occupations of the inpatient's parents, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(3) The department shall provide forms that may be used to record information specified under sub.(2) and shall provide guidelines for determining whether to prepare the occupational history required under sub.(2). Nothing in this section shall be construed to require a hospital or physician to collect information required in this section from or about a patient who chooses not to divulge such information.

History: 1981 c. 214.

146.817 Preservation of fetal monitor tracings and microfilm copies. (1) In this section, "fetal monitor tracing" means documentation of the heart tones of a fetus during labor and delivery of the mother of the fetus that are recorded from an electronic fetal monitor machine.

(2) (a) Unless a health care provider has first made and preserved a microfilm copy of a patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the patient's fetal monitor tracing only if 35 days prior to the deletion or destruction the health care provider provides written notice to the patient.

(b) If a health care provider has made and preserved a microfilm copy of a patient's fetal monitor tracing and if the health care provider has deleted or destroyed part or all of the patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the microfilm copy of the patient's fetal monitor tracing only if 35 days prior to the deletion or destruction the health care provider provides written notice to the patient.

(c) The notice specified in pars.(a) and (b) shall be sent to the patient's last-known address and shall inform the patient of the imminent deletion or destruction of the fetal monitor tracing or of the microfilm copy of the fetal monitor tracing and of the patient's right, within 30 days after receipt of notice, to obtain the fetal monitor tracing or the microfilm copy of the fetal monitor tracing from the health care provider.

(d) The notice requirements under this subsection do not apply after 5 years after a fetal monitor tracing was first made.

History: 1987 a. 27, 399,403.

146.819 Preservation or destruction of patient health care records.

(1) Except as provided in sub.(4), any health care provider who ceases practice or business as a health care provider or the personal representative of a deceased health care provider who was an independent practitioner shall do one of the following for all patient health care records in the possession of the health care provider when the health care provider ceased business or practice or died:

(a) Provide for the maintenance of the patient health care records by a person who states, in writing, that the records will be maintained in compliance with ss. 146.81 to 146.835.

(b) Provide for the deletion or destruction of the patient health care records.

(c) Provide for the maintenance of some of the patient health care records, as specified in par.(a), and for the deletion or destruction of some of the records, as specified in par.(b).

(2) If the health care provider or personal representative provides for the maintenance of any of the patient health care records under sub.(1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide written notice, by 1st class mail, to each patient or person authorized by the patient whose records will be maintained, at the last-known address of the patient or person, describing where and by whom the records shall be maintained.

(b) Publish, under ch. 985, a class 3 notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying where and by whom the patient health care records shall be maintained.

(3) If the health care provider or personal representative provides for the deletion or destruction of any of the patient health care records under sub.(1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide notice to each patient or person authorized by the patient whose records will be deleted or destroyed, that the records pertaining to the patient will be deleted or destroyed. The notice shall be provided at least 35 days prior to deleting or destroying the records, shall be in writing and shall be sent, by 1st class mail, to the last-known address of the patient to whom the records pertain or the last-known address of the person authorized by the patient. The notice shall inform the patient or person authorized by the patient of the date on which the records will be deleted or destroyed, unless the patient or person retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(b) Publish, under ch. 985, a class 3 notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying the date on which the records will be deleted or destroyed, unless the patient or person authorized by the patient retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(4) This section does not apply to a health care provider that is any of the following:

(a) A community-based residential facility or nursing home licensed under s. 50.03.

(b) A hospital approved under s. 50.35.

(c) A hospice licensed under s. 50.92.

(d) A home health agency licensed under s. 50.49 (4).

(f) A local health department, as defined in s. 250.01 (4), that ceases practice or business and transfers the patient health care records in its possession to a successor local health department.

History: 1991 a. 269; 1993 a. 27; 1999 a. 9.

Cross Reference: See also ch. Med 21, Wis. adm. code.

146.82 Confidentiality of patient health care records.

CONFIDENTIALITY. All patient health care records shall remain confidential. Patient health care records may be released only to the persons designated in this section or to other persons with the informed consent of the patient or of a person authorized by the patient. This subsection does not prohibit reports made in compliance with s. 146.995, 253.12 (2) or 979.01 or testimony authorized under s. 905.04 (4) (h).

(2) **ACCESS WITHOUT INFORMED CONSENT.** (a) Notwithstanding sub.(1), patient health care records shall be released upon request without informed consent in the following circumstances:

1. To health care facility staff committees, or accreditation or health care services review organizations for the purposes of conducting management audits, financial audits, program monitoring and evaluation, health care services reviews or accreditation.

2. To the extent that performance of their duties requires access to the records, to a health care provider or any person acting under the supervision of a health care provider or to a person licensed under s. 146.50, including medical staff members, employees or persons serving in training programs or participating in volunteer programs and affiliated with the health care provider, if any of the following is applicable:

a. The person is rendering assistance to the patient.

b. The person is being consulted regarding the health of the patient.

c. The life or health of the patient appears to be in danger and the information contained in the patient health care records may aid the person in rendering assistance.

d. The person prepares or stores records, for the purposes of the preparation or storage of those records.

3. To the extent that the records are needed for billing, collection or payment of claims.

4. Under a lawful order of a court of record.

5. In response to a written request by any federal or state governmental agency to perform a legally authorized function, including but not limited to management audits, financial audits, program monitoring and evaluation, facility licensure or certification or individual licensure or certification. The private pay patient, except if a resident of a nursing home, may deny access granted under this subdivision by annually submitting to a health care provider, other than a nursing home, a signed, written request on a form provided by the department. The provider, if a hospital, shall submit a copy of the signed form to the patient's physician.

6. For purposes of research if the researcher is affiliated with the health care provider and provides written assurances to the custodian of the patient health care records that the information will be used only for the purposes for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final product of the research will not reveal information that may serve to identify the patient whose records are being released under this paragraph without the informed consent of the patient. The private pay patient may deny access granted under this subdivision by annually submitting to the health care provider a signed, written request on a form provided by the department.

7. To a county agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for purposes of s. 46.90 (4) (a) and (5) or to the county protective services agency designated under s. 55.02 for purposes of s. 55.043. The health care provider may release information by initiating contact with the county agency or county protective services agency without receiving a request for release of the information from the county agency or county protective services agency.

8. To the department under s. 255.04. The release of a patient health care record under this subdivision shall be limited to the information prescribed by the department under s. 255.04 (2).

9. a. In this subdivision, "abuse" has the meaning given in s. 51.62 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the meaning given in s. 48.02 (13), except that "parent" does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under s. 880.33.

b. Except as provided in subd. 9. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights of a person with developmental disabilities, as defined under s. 51.62 (1) (am), who resides in or who is receiving services from an inpatient health care facility, as defined under s. 51.62 (1) (b), or a person with mental illness, as defined under s. 51.62 (1) (bm).

c. If the patient, regardless of age, has a guardian appointed under s. 880.33, or if the patient is a minor with developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 9. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the guardian of the patient and the date and place of the guardian's appointment **or**, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, the name, address and telephone number of the parent or guardian appointed under s. 48.831 of the patient.

d. Except as provided in subd. 9. e., any staff member who wishes to obtain additional information about a patient described in subd. 9. c. shall notify the patient's guardian **or**, if applicable, parent in writing of the request and of the guardian's or parent's right to object. The staff member shall send the notice by mail to the guardian's **or**, if applicable, parent's address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian **or** parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 9. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency **or** nonprofit corporation about a patient, **or** if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good-faith effort **to** contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent **or** guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused **to** act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause **to** believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in s. 48.02 (11) or for whom a guardian that is an agency of the state or a county has been appointed.

10. To persons as provided under s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29, if the patient files a submission of controversy under s. 655.04 (1), 1983 stats., on or after July 20, 1985 and before June 14, 1986, for the purposes of s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29.

11. To a county department, as defined under s. 48.02 (2g), a sheriff or police department or a district attorney for purposes of

investigation of threatened or suspected child abuse **or** neglect or suspected unborn child abuse or for purposes of prosecution of alleged child abuse or neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name. The health care provider may release information by initiating contact with a county department, sheriff or police department or district attorney without receiving a request for release of the information. A person to whom a report or record is disclosed under this subdivision may not further disclose it, except to the persons, for the purposes and under the conditions specified in s. 48.981 (7).

12. To a school district employee or agent, with regard to patient health care records maintained by the school district by which he or she is employed or is an agent, if any of the following apply: a. The employee or agent has responsibility for preparation or storage of patient health care records. b. Access to the patient health care records is necessary to comply with a requirement in federal or state law.

13. To persons and entities under s. 940.22.

14. To a representative of the board on aging and long-term care, in accordance with s. 49.498 (5) (e).

15. To the department under s. 48.60 (5) (c), 50.02 (5) or 51.03 (2) or to a sheriff, police department or district attorney for purposes of investigation of a death reported under s. 48.60 (5) (a), 50.035 (5) (b), 50.04 (2t) (b) or 51.64 (2).

16. To a designated representative of the long-term care ombudsman under s. 16.009 (4), for the purpose of protecting and advocating the rights of an individual 60 years of age or older who resides in a long-term care facility, as specified in s. 16.009 (4) (b).

17. To the department under s. 50.53 (2).

18. Following the death of a patient, **to** a coroner, deputy coroner, medical examiner **or** medical examiner's assistant, for the purpose of completing a medical certificate under s. 69.18 (2) or investigating a death under s. 979.01 or 979.10. The health care provider may release information by initiating contact with the office of the coroner or medical examiner without receiving a request for release of the information and shall release information upon receipt of an oral or written request for the information from the coroner, deputy coroner, medical examiner or medical examiner's assistant. The recipient of any information under this subdivision shall keep the information confidential except as necessary to comply with s. 69.18, 979.01 or 979.10.

18m. If the subject of the patient health care records is a child or juvenile who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or a secured correctional facility, including a placement under s. 48.205, 48.21, 938.205, or 938.21 or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child or juvenile, or to an agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements, **to** the foster parent or treatment foster parent of the child or juvenile or the operator of the group home, residential care center for children and youth, or secured correctional facility in which the child or juvenile is placed, as provided in s. 48.371 or 938.371.

19. To ~~an~~ organ procurement organization by a hospital pursuant to s. 157.06 (5) (b) 1.

20. If the patient health care records do not contain information and the circumstances of the release do not provide information that would permit the identification of the patient.

21. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer **to** maintain

prisoner medical records, if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 or to the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 (4).

(b) Except as provided in s. 610.70 (3) and (5), unless authorized by a court of record, the recipient of any information under par.(a) shall keep the information confidential and may not disclose identifying information about the patient whose patient health care records are released.

(c) Notwithstanding sub.(1), patient health care records shall be released to appropriate examiners and facilities in accordance with ss. 971.17 (2) (e), (4) (c) and (7) (c), 980.03 (4) and 980.08 (3). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 or ch. 980.

(d) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

(3) REPORTS MADE WITHOUT INFORMED CONSENT. (a) Notwithstanding sub.(1), a physician who treats a patient whose physical or mental condition in the physician's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(b) Notwithstanding sub.(1), an optometrist who examines a patient whose vision in the optometrist's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(c) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105.

Because under s. 905.04 (4) (f) there is no privilege for chemical tests for intoxication, results of a test taken for diagnostic purposes are admissible in an OMVWI trial without patient approval. *City of Muskego v. Godec*, 167 Wis. 2d 536, 482 N.W.2d 79 (1992).

Patient billing records requested by the state in a fraud investigation under s. 46.25 [now s. 49.22] may be admitted into evidence under the exception to confidentiality found under sub. (2) (a) 3. *State v. Allen*, 200 Wis. 2d 301, 546 N.W.2d 517 (1996).

This section does not restrict access to medical procedures and did not prevent a police officer from being present during an operation. *State v. Thompson*, 222 Wis. 2d 179, 585 N.W.2d 905 (Ct. App. 1998).

The provision of confidentiality for patient health records is not an absolute bar to the release of information without the patient's informed consent. Sub. (2) provides numerous exceptions. Information of previous assaultive behavior by a nursing home resident was not protected by the physician-patient privilege and was subject to release by "lawful court order." *Crawford v. Care Concepts, Inc.* 2001 WI App 45, 243 Wis. 2d 119, 625 N.W.2d 876. Disclosure of patient health care records in Wisconsin. *Lehner*, WBB Aug. 1984.

Confidentiality of Medical Records. Meili. Wis. Law. Feb. 1995.

146.83 Access to patient health care records. (1) Except as provided in s. 51.30 or 146.82 (2), any patient or other person may, upon submitting a statement of informed consent:

(a) Inspect the health care records of a health care provider pertaining to that patient at any time during regular business hours, upon reasonable notice.

(b) Receive a copy of the patient's health care records upon payment of fees, as established by rule under sub.(3m).

(c) Receive a copy of the health care provider's X-ray reports or have the X-rays referred to another health care provider of the patient's choice upon payment of fees, as established by rule under sub.(3m).

(1m) (a) A patient's health care records shall be provided to the patient's health care provider upon request and, except as provided in s. 146.82 (2), with a statement of informed consent.

(b) The health care provider under par.(a) may be charged reasonable costs for the provision of the patient's health care records.

(2) The health care provider shall provide each patient with a statement paraphrasing the provisions of this section either upon admission to an inpatient health care facility, as defined in s. 50.135 (1), or upon the first provision of services by the health care provider.

(3) The health care provider shall note the time and date of each request by a patient or person authorized by the patient to inspect the patient's health care records, the name of the inspecting person, the time and date of inspection and identify the records released for inspection.

(3m) (a) The department shall, by rule, prescribe fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge under sub.(1) (b) for duplicate patient health care records and under sub.(1) (c) for duplicate X-ray reports or the referral of X-rays to another health care provider of the patient's choice. The rule shall also permit the health care provider to charge for actual postage or other actual delivery costs. In determining the approximation of actual costs for the purposes of this subsection, the department may consider all of the following factors: 1. Operating expenses, such as wages, rent, utilities, and duplication equipment and supplies. 2. The varying cost of retrieval of records, based on the different media on which the records are maintained. 3. The cost of separating requested patient health care records from those that are not requested. 4. The cost of duplicating requested patient health care records. 5. The impact on costs of advances in technology.

(b) By January 1, 2006, and every 3 years thereafter, the department shall revise the rules under par.(a) to account for increases or decreases in actual costs.

(4) No person may do any of the following:

(a) Intentionally falsify a patient health care record.

(b) Conceal or withhold a patient health care record with intent to prevent or obstruct an investigation or prosecution or with intent to prevent its release to the patient, to his or her guardian appointed under ch. 880, to his or her health care provider with a statement of informed consent, or under the conditions specified in s. 146.82 (2), or to a person with a statement of informed consent.

(c) Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

History: 1979 c. 221; 1989 a. 56; 1993 a. 27, 445; 1997 a. 157; 2001 a. 109.

Sub. (1) (b) does not preclude certification of a class action in a suit to recover unreasonable fees charged for copies of health care records. *Cruz v. All Saints Healthcare System Inc.* 2001 WI App 67, 242 Wis. 2d 432, 625 N.W.2d 344.

146.835 Parents denied physical placement rights. A parent who has been denied periods of physical placement under s. 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian under this chapter with respect to access to that child's patient health care records under s. 146.82 or 146.83.

History: 1987 a. 355.

146.836 Applicability. Sections 146.815, 146.82, 146.83 (4) and 146.835 apply to all patient health care records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

History: 1999 a. 78.

146.84 Violations related to patient health care records.

(1) ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION. (a) A custodian of records incurs no liability under par.(bm) for the release of records in accordance with s. 146.82 or 146.83 while acting in good faith.

(b) Any person, including the state or any political subdivision of the state, who violates s. 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than \$25,000 and costs and reasonable actual attorney fees.

(bm) Any person, including the state or any political subdivision of the state, who negligently violates s. 146.82 or 146.83 shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than \$1,000 and costs and reasonable actual attorney fees.

(c) An individual may bring an action to enjoin any violation of s. 146.82 or 146.83 or to compel compliance with s. 146.82 or 146.83 and may, in the same action, seek damages as provided in this subsection.

(2) PENALTIES. (a) Whoever does any of the following may be fined not more than \$25,000 or imprisoned for not more than 9 months or both:

1. Requests or obtains confidential information under s. 146.82 or 146.83(1) under false pretenses.

2. Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

3. Violates s. 146.83(4).

(b) 'Whoever negligently discloses confidential information in violation of s. 146.82 is subject to a forfeiture of not more than \$1,000 for each violation.

(c) 'Whoever intentionally discloses confidential information in violation of s. 146.82, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both.

(3) **DISCIPLINE OF EMPLOYEES.** Any person employed by the state or any political subdivision of the state who violates s. 146.82 or 146.83, except a health care provider that negligently violates s. 153.50(6) (c), may be discharged or suspended without pay.

(4) **EXCEPTIONS.** This section does not apply to any of the following:

(a) Violations by a nursing facility, as defined under s. 49.498 (1) (i), of the right of a resident of the nursing facility to confidentiality of his or her patient health care records.

(b) Violations by a nursing home, as defined under s. 50.01 (3), of the right of a resident of the nursing home to confidentiality of his or her patient health care records.

History: 1991 a. 39; 1993 a. 445; 1999 a. 9, 79.

Sub.(1) (b) does not preclude certification of a class action in a suit to recover unreasonable fees charged for copies of health care records. *Cruz v. All Saints Healthcare System Inc.* 2001 WI App 67, 242 Wis. 2d 432, 625 N.W.2d 344.

146.885 Acceptance of assignment for medicare. The department shall annually provide aging units, as defined in s. 46.82 (1) (a), with enrollment cards for and materials explaining the voluntary program that is specified in s. 71.55 (10) (b), for distribution to individuals who are eligible or potentially eligible for participation in the program. The state medical society shall supply the department with the enrollment cards and the explanatory materials for distribution under this section.

History: 1989 a. 294, 359; Stats. 1989 s. 146.885; 1991 a. 235.

146.89 Volunteer health care provider program. (1) In this section, "volunteer health care provider" means an individual who is licensed as a physician under ch. 448, dentist under ch. 447, registered nurse, practical nurse or nurse-midwife under ch. 441, optometrist under ch. 449 or physician assistant under ch. 448 or certified as a dietitian under subch. V of ch. 448 and who receives no income from the practice of that health care profession or who receives no income from the practice of that health care profession when providing services at the nonprofit agency specified under sub.(3).

(2) (a) A volunteer health care provider may participate under this section only if he or she submits a joint application with a nonprofit agency to the department of administration and that department approves the application. The department of administration shall provide application forms for use under this paragraph.

(b) The department of administration may send an application to the medical examining board for evaluation. The medical examining board shall evaluate any application submitted by the department of administration and return the application to the department of administration with the board's recommendation regarding approval.

(c) The department of administration shall notify the volunteer health care provider and the nonprofit agency of the department's decision to approve or disapprove the application.

(d) Approval of an application of a volunteer health care provider is valid for one year. If a volunteer health care provider wishes to renew approval, he or she shall submit a joint renewal application with a nonprofit agency to the department of administration. The department of administration shall provide renewal application forms that are developed by the department of health and family services and that include questions about the activities that the individual has undertaken as a volunteer health care provider in the previous 12 months.

(3) Any volunteer health care provider and nonprofit agency whose joint application is approved under sub.(2) shall meet the following applicable conditions:

(a) The volunteer health care provider shall provide services under par.(b) without charge at the nonprofit agency, if the joint application of the volunteer health care provider and the nonprofit agency has received approval under sub.(2) (a).

(b) The nonprofit agency may provide the following health care services:

1. Diagnostic tests.
2. Health education.
3. Information about available health care resources.
4. Office visits.
5. Patient advocacy.
6. Prescriptions.
7. Referrals to health care specialists.

8. Dental services, including simple tooth extractions and any necessary suturing related to the extractions, performed by a dentist who is a volunteer health provider.

(c) The nonprofit agency may not provide emergency medical services, hospitalization or surgery, except as provided in par.(b) 8.

(d) The nonprofit agency shall provide health care services primarily to low-income persons who are uninsured and who are not recipients of any of the following:

2. Medical assistance under subch. IV of ch. 49.
3. Medicare under 42 USC 1395-1395ccc.

(4) Volunteer health care providers who provide services under this section are, for the provision of these services, state agents of the department of health and family services for purposes of ss. 165.25(6), 893.82(3) and 895.46.

History: 1989 a. 206; 1991 a. 269; 1993 a. 28, 490; 1995 a. 27 ss. 4378 to 4380, 9126 (19); 1997 a. 27, 57, 67; 1999 a. 23.

146.905 Reduction in fees prohibited. (1) Except as provided in sub.(2), a health care provider, as defined in s. 146.81 (1), that provides a service or a product to an individual with coverage under a disability insurance policy, as defined in s. 632.895 (1) (a), may not reduce or eliminate or offer to reduce or eliminate coinsurance or a deductible required under the terms of the disability insurance policy.

(2) Subsection (1) does not apply if payment of the total fee would impose an undue financial hardship on the individual receiving the service or product.

History: 1991 a. 250; 1995 a. 225.

146.91 Long-term care insurance. (1) In this section, "long-term care insurance" means insurance that provides coverage both for an extended stay in a nursing home and home health services for a person with a chronic condition. The insurance may also provide coverage for other services that assist the insured person in living outside a nursing home including but not limited to adult day care and continuing care retirement communities.

(2) The department, with the advice of the council on long-term care insurance, the office of the commissioner of insurance, the board on aging and long-term care and the department of employee trust funds, shall design a program that includes the following:

(a) Subsidizing premiums for persons purchasing long-term care insurance, based on the purchasers' ability to pay.

(b) Reinsuring by the state of policies issued in this state by long-term care insurers.

(c) Allowing persons to retain liquid assets in excess of the amounts specified in s. 49.47 (4) (b) 3g., 3m. and 3r., for purposes of medical assistance eligibility, if the persons purchase long-term care insurance.

(3) The department shall collect any data on health care costs and utilization that the department determines to be necessary to design the program under sub.(2).

(5) In designing the program, the department shall consult with the federal department of health and human services to determine the feasibility of procuring a waiver of federal law or regulations that will maximize use of federal medicaid funding for the program designed under sub.(2).

(6) The department, with the advice of the council on long-term care insurance, may examine use of tax incentives for the sale and purchase of long-term care insurance.

History: 1987 a. 27; 1989 a. 56.

146.93 Primary health care program. (1) (a) From the appropriation under s. 20.435 (4) (gp), the department shall maintain a program for the provision of primary health care services based on the primary health care program in existence on June 30, 1987. The department may promulgate rules necessary to implement the program.

(c) The department shall seek to obtain a maximum of donated or reduced-rate health care services for the program and shall seek to identify and obtain a maximum of federal funds for the program.

(2) The program under sub.(1) (a) shall provide primary health care, including diagnostic laboratory and X-ray services, prescription drugs and nonprescription insulin and insulin syringes.

(3) The program under sub.(1) (a) shall be implemented in those counties with high unemployment rates and within which a maximum of donated or reduced-rate health care services can be obtained.

(4) The health care services of the program under sub.(1) (a) shall be provided to any individual residing in a county under sub.(3) who meets all of the following criteria:

(a) The individual is either unemployed or is employed less than 25 hours per week.

(b) The individual's family income is not greater than 150% of the federal poverty line, as defined under 42 USC 9902 (2).

(c) The individual does not have health insurance or other health care coverage and is unable to obtain health insurance or other health care coverage.

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1999 a. 9.

146.95 Patient visitation. (1) DEFINITIONS. In this section:

(a) "Health care provider" has the meaning given in s. 155.01 (7).

(b) "Inpatient health care facility" has the meaning given in s. 552.14 (1) (d).

(c) "Treatment facility" has the meaning given in s. 51.01 (19).

(2) **PATIENT-DESIGNATED VISITORS.** (a) Any individual who is 18 years of age or older may identify to a health care provider at an inpatient health care facility at any time, either orally or in writing, those persons with whom the individual wishes to visit while the individual is a patient at the inpatient health care facility. Except as provided in par.(b), no inpatient health care facility may deny visitation during the inpatient health care facility's regular visiting hours to any person identified by the individual.

(b) Subject to s. 51.61 for a treatment facility, an inpatient health care facility may deny visitation with a patient to any person if any of the following applies:

1. The inpatient health care facility or a health care provider determines that the patient may not receive any visitors.

2. The inpatient health care facility or a health care provider determines that the presence of the person would endanger the health or safety of the patient.

3. The inpatient health care facility determines that the presence of the person would interfere with the primary operations of the inpatient health care facility.

4. The patient has subsequently expressed in writing to a health care provider at the inpatient health care facility that the patient no longer wishes to visit with the person. Unless subd. 2. applies, an inpatient health care facility may not under this subdivision deny visitation to the person based on a claim by someone other than a health care provider that the patient has orally expressed that the patient no longer wishes to visit with that person.

History: 1997 a. 153.

146.96 Uniform claim processing form. Beginning no later than July 1, 2004, every health care provider, as defined in s. 146.81 (1), shall use the uniform claim processing form developed by the commissioner of insurance under s. 601.41 (9) (b) when submitting a claim to an insurer.

History: 2001 a. 109.

146.99 Assessments. The department shall, within 90 days after the commencement of each fiscal year, assess hospitals, as defined in s. 50.33 (2), a total of \$1,500,000, in proportion to each hospital's respective gross private-pay patient revenues during the

hospital's most recently concluded entire fiscal year. Each hospital shall pay its assessment on or before December 1 for the fiscal year. All payments of assessments shall be deposited in the appropriation under s. 20.435 (4) (gp).

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 269; 1999 a. 9.

146.995 Reporting of wounds and burn injuries. (1) In this section:

(a) "Crime" has the meaning specified in s. 949.01 (1).

(b) "Inpatient health care facility" has the meaning specified in s. 50.135 (1).

(2) (a) Any person licensed, certified or registered by the state under ch. 441, 448 or 455 who treats a patient suffering from any of the following shall report in accordance with par.(b): 1. A gunshot wound. 2. Any wound other than a gunshot wound if the person has reasonable cause to believe that the wound occurred as a result of a crime. 3. Second-degree or 3rd-degree burns to at least 5% of the patient's body or, due to the inhalation of superheated air, swelling of the patient's larynx or a burn to the patient's upper respiratory tract, if the person has reasonable cause to believe that the burn occurred as a result of a crime.

(b) For any mandatory report under par.(a), the person shall report the patient's name and the type of wound or burn injury involved as soon as reasonably possible to the local police department or county sheriff's office for the area where the treatment is rendered.

(c) Any such person who intentionally fails to report as required under this subsection may be required to forfeit not more than \$500.

(3) Any person reporting in good faith under sub.(2), and any inpatient health care facility that employs the person who reports, are immune from all civil and criminal liability that may result because of the report. In any proceeding, the good faith of any person reporting under this section shall be presumed.

(4) The reporting requirement under sub.(2) does not apply under any of the following circumstances:

(a) The patient is accompanied by a law enforcement officer at the time treatment is rendered.

(b) The patient's name and type of wound or burn injury have been previously reported under sub.(2).

(c) The wound is a gunshot wound and appears to have occurred at least 30 days prior to the time of treatment.

History: 1987 a. 233; 1991 a. 39; 1993 a. 27.

146.997 Health care worker protection. (1) DEFINITIONS. In this section:

(a) "Department" means the department of workforce development.

(b) "Disciplinary action" has the meaning given in s. 230.80 (2).

(c) "Health care facility" means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health complex or other place licensed or approved by the department of health and family services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) "Health care provider" means any of the following:

1. A nurse licensed under ch. 441.

2. A chiropractor licensed under ch. 446.

3. A dentist licensed under ch. 447. 4. A physician, podiatrist, perfusionist, or physical therapist licensed under ch. 448.

NOTE: Subd. 4 is shown below as affected by 2001 Wis. Acts 70 and 89, eff. 4-1-04. 4. A physician, podiatrist, perfusionist, physical therapist, or physical therapist assistant licensed under ch. 448.

5. An occupational therapist, occupational therapy assistant, physician assistant or respiratory care practitioner certified under ch. 448.

6. A dietitian certified under subch. V of ch. 448.

7. An optometrist licensed under ch. 449.

8. A pharmacist licensed under ch. 450.

9. An acupuncturist certified under ch. 451.

10. A psychologist licensed under ch. 455.

11. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

12. A speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

13. A massage therapist or bodyworker issued a certificate under ch. 460.

NOTE: Subd. 13. is shown as amended eff. 3-1-03 by 2001 Wis. Act 74. Prior to 3-1-03 it reads: 13. A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.

14. An emergency medical technician licensed under s. 146.50 (5) or a first responder.

15. A partnership of any providers specified under subds. 1. to 14.

16. A corporation or limited liability company of any providers specified under subds. 1. to 14. that provides health care services.

17. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

18. A hospice licensed under subch. IV of ch. 50 19. A rural medical center, as defined in s. 50.50 (11). 20. A home health agency, as defined in s. 50.49 (1) (a).

(2) REPORTING PROTECTED. (a) Any employee of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in s. 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard-setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employee of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employee of the health care facility or health care provider has violated any state law or rule or federal law or regulation.

2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employee of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or standard-setting body and poses a potential risk to public health or safety.

(b) An agency or accrediting or standard-setting body that receives a report under par.(a) shall, within 5 days after receiving the report, notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par.(a) 1. or 2. has been received and provide the health care facility or health care provider with a written summary of the contents of the report, unless the agency, or accrediting or standard-setting body determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employee of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par.(a) 1. or 2. is alleged.

(d) Any employee of a health care facility or health care provider may provide any information relating to an alleged violation specified in par.(a) 1. or 2. to any legislator or legislative committee.

(3) DISCIPLINARY ACTION PROHIBITED. (a) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under

sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) or because the health care facility, health care provider or employee believes that the person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d).

(b) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) or because the health care facility, health care provider or employee believes that another person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) on that person's behalf.

(c) For purposes of pars.(a) and (b), an employee is not acting in good faith if the employee reports any information under sub.(2) (a) that the employee knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub.(2) (c) based on information that the employee knows or should know is false or misleading or provides any information under sub.(2) (d) that the employee knows or should know is false or misleading.

(4) ENFORCEMENT. (a) Subject to par.(b), any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub.(3) may file a complaint with the department under s. 106.54 (6). If the department finds that a violation of sub.(3) has been committed, the department may take such action under s. 111.39 as will effectuate the purpose of this section.

(b) Any employee of a health care facility operated by an agency, as defined in s. 111.32 (6) (a), of the state who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub.(3) may file a complaint with the personnel commission under s. 230.45 (1) (L). If the personnel commission finds that a violation of sub.(3) has been committed, the personnel commission may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par.(a) or (b).

(5) CIVIL PENALTY. Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub.(3) may be required to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a violation committed within 12 months of a previous violation and not more than \$10,000 for a violation committed within 12 months of 2 or more previous violations. The 12-month period shall be measured by using the dates of the violations that resulted in convictions.

(6) POSTING OF NOTICE. Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than \$100 for each offense.

History: 1999a. 176, 186; 2001 a. 38, 70, 74, 89, 105.

CHAPTER 252 COMMUNICABLE DISEASES

252.10 Public health dispensaries.

252.14 Discrimination related to acquired immunodeficiency syndrome

252.15 Restrictions on use of a test for HIV.

252.10 Public health dispensaries. (1) A local health department may request from the department certification to establish and maintain a public health dispensary for the diagnosis and treatment of persons suffering from or suspected of having tuberculosis. Two or more local health departments may jointly establish, operate and maintain public health dispensaries. The department shall certify a local health department to establish and maintain a public health dispensary if the local health department meets the standards established by the department by rule. The department of health and family services may withhold, suspend or revoke a certification if the local health department fails to comply with any rules promulgated by the department. The department shall provide the local health department with reasonable notice of the decision to withhold, suspend or revoke certification. The department shall offer the local health department an opportunity to comply with the rules and an opportunity for a fair hearing. Certified local health departments may contract for public health dispensary services. If the provider of those services fails to comply, the department may suspend or revoke the local health department's certification. The department may establish, operate and maintain public health dispensaries and branches in areas of the state where local authorities have not provided public health dispensaries.

(6) (a) The state shall credit or reimburse each dispensary on an annual or quarterly basis for the operation of public health dispensaries established and maintained in accordance with this section and rules promulgated by the department.

(b) The department shall determine by rule the reimbursement rate under par. (a) for services.

(g) The reimbursement by the state under pars. (a) and (b) shall apply only to funds that the department allocates for the reimbursement under the appropriation under s. 20.435 (5) (e).

(7) Drugs necessary for the treatment of mycobacterium tuberculosis shall be purchased by the department from the appropriation under s. 20.435 (5) (e) and dispensed to patients through the public health dispensaries, local health departments, physicians or advanced practice nurse prescribers.

(9) Public health dispensaries shall maintain such records as are required by the department to enable them to carry out their responsibilities designated in this section and in rules promulgated by the department. Records may be audited by the department.

(10) All public health dispensaries and branches thereof shall maintain records of costs and receipts which may be audited by the department of health and family services.

History: 1971 c. 81; 1971 c. 211 s. 124; 1973 c. 90; 1975 c. 39, 198, 224; 1975 c. 413 ss. 2, 18; Stats. 1975 s. 149.06; 1977 c. 29; 1981 c. 20 ss. 1446, 2202 (20) (c); 1983 a. 27; 1985 a. 29; 1991 a. 39, 160; 1993 a. 27 ss. 406, 407, 409, 411 to 414; Stats. 1993 s. 252.10, 1993 a. 443; 1995 a. 27 ss. 6318, 9126 (19), 9145 (1); 1997 a. 27, 75, 156, 175, 252; 1999 a. 9, 32, 186.

Cross Reference: See also ch. HFS 145, Wis. adm. code. .

252.14 Discrimination related to acquired immunodeficiency syndrome. (1) In this section:

(ad) "Correctional officer" has the meaning given in s. 301.28 (1).

(am) "Fire fighter" has the meaning given in s. 102.475 (8) (b).

(ar) "Health care provider" means any of the following:

1. A nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician licensed under subch. II of ch. 448.
- 4c. A perfusionist licensed under subch. II of ch. 448.

NOTE: Subd. 4c. is created eff. 1-1-03 by 2001 Wis. Act 89.

4e. A physical therapist licensed under subch. III of ch. 448.

NOTE: Subd. 4e. is amended eff. 4-1-04 by 2001 Wis. Act 70 to read: 4e. A physical therapist or physical therapist assistant licensed under subch. III of ch. 448.

4g. A podiatrist licensed under subch. IV of ch. 448.

4m. A dietitian certified under subch. V of ch. 448.

4p. An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.

4q. An athletic trainer licensed under subch. VI of ch. 448.

5. An optometrist licensed under ch. 449.

6. A psychologist licensed under ch. 455.

7. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

NOTE: Subd. 7. is shown as amended eff. 11-1-02 by 2001 Wis. Act 80. Prior to 11-1-02 it reads:

7. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

8. A speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

9. An employee or agent of any provider specified under subds. 1. to 8.

10. A partnership of any provider specified under subds. 1. to 8.

11. A corporation of any provider specified under subds. 1. to 8. that provides health care services.

12. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

13. An emergency medical technician licensed under s. 146.50 (5).

14. A physician assistant licensed under ch. 448. 15. A first responder.

(c) "Home health agency" has the meaning specified in s. 50.49 (1) (a).

(d) "Inpatient health care facility" means a hospital, nursing home, community-based residential facility, county home, county mental health complex or other place licensed or approved by the department under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.365, 48.62, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(2) No health care provider, peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, home health agency, inpatient health care facility or person who has access to a validated test result may do any of the following with respect to an individual who has acquired immunodeficiency syndrome or has a positive test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, solely because the individual has HIV infection or an illness or medical condition that is caused by, arises from or is related to HIV infection:

(a) Refuse to treat the individual, if his or her condition is within the scope of licensure or certification of the health care provider, home health agency or inpatient health care facility.

(am) If a peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, refuse to provide services to the individual.

(b) Provide care to the individual at a standard that is lower than that provided other individuals with like medical needs.

(bm) If a peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, provide services to the individual at a standard that is lower than that provided other individuals with like service needs.

(c) Isolate the individual unless medically necessary.

(d) Subject the individual to indignity, including humiliating, degrading or abusive treatment.

(3) A health care provider, home health agency or inpatient health care facility that tests an individual for HIV infection shall provide counseling about HIV and referral for appropriate health care and support services as necessary. A health care provider, home health agency or inpatient health care facility that treats an individual who has an HIV infection or acquired

immunodeficiency syndrome shall develop and follow procedures that shall ensure continuity of care for the individual in the event that his or her condition exceeds the scope of licensure or certification of the provider, agency or facility.

(4) Any person violating Sub. (2) is liable to the patient for actual damages and costs, plus exemplary damages of up to \$5,000 for an intentional violation. In determining the amount of exemplary damages, a court shall consider the ability of a health care provider who is an individual to pay exemplary damages.

History: 1989 a. 201; 1991 a. 32, 39, 160, 189, 269, 315; 1993 a. 27 ss. 326 to 331; Stats. 1993 s. 252.14; 1993 a. 105, 190, 252, 443; 1993 a. 490 s. 143; 1993 a. 491, 495; 1995 a. 27 ss. 6322, 9145 (1); 1997 a. 27, 35, 67, 75, 175; 1999 a. 9, 32, 180; 2001 a. 70, 80, 89.

252.15 Restrictions on use of a test for HIV.

(1) DEFINITIONS. In this section: (ab) "Affected person" means an emergency medical technician, first responder, fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, health care provider, employee of a health care provider or staff member of a state crime laboratory.

(ad) "Correctional officer" has the meaning given in s. 301.28 (1).

(af) "Emergency medical technician" has the meaning given in s. 146.50 (1) (e).

(aj) "Fire fighter" has the meaning given in s. 102.475 (8) (b).

(am) "Health care professional" means a physician who is licensed under ch. 448 or a registered nurse or licensed practical nurse who is licensed under ch. 441.

(ar) "Health care provider" means any of the following: 1. A person or entity that is specified in s. 146.81 (1), but does not include a massage therapist or bodyworker issued a certificate under ch. 460.

NOTE: Subd. 1. is shown as amended eff. 3-1-03 by 2001 Wis. Act 74. Prior to 3-1-03 it reads: 1. A person or entity that is specified in s. 146.81

(1), but does not include a massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.

2. A home health agency.

3. An employee of the Mendota mental health institute or the Winnebago mental health institute.

(cm) "Home health agency" has the meaning given in s. 50.49 (1) (a).

(d) "Informed consent for testing or disclosure" means consent in writing on an informed consent for testing or disclosure form by a person to the administration of a test to him or her for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or to the disclosure to another specified person of the results of a test administered to the person consenting.

(e) "Informed consent for testing or disclosure form" means a printed document on which a person may signify his or her informed consent for testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or authorize the disclosure of any test results obtained.

(eg) "Relative" means a spouse, parent, grandparent, stepparent, brother, sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree of kinship as computed under s. 990.001 (16). This relationship may be by blood, marriage or adoption.

(em) "Significantly exposed" means sustained a contact which carries a potential for a transmission of HIV, by one or more of the following:

1. Transmission, into a body orifice or onto mucous membrane, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

2. Exchange, during the accidental or intentional infliction of a penetrating wound, including a needle puncture, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

3. Exchange, into an eye, an open wound, an oozing lesion, or where a significant breakdown in the epidermal barrier has occurred, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

6. Other routes of exposure, defined as significant in rules promulgated by the department. The department in promulgating the rules shall consider all potential routes of transmission of HIV identified by the centers for disease control of the federal public health service.

(fm) "Universal precautions" means measures that a health care provider, an employee of a health care provider or other individual takes in accordance with recommendations of the federal centers for disease control for the health care provider, employee or other individual for prevention of HIV transmission in health-care settings.

(2) INFORMED CONSENT FOR TESTING OR DISCLOSURE. (a) No health care provider, blood bank, blood center or plasma center may subject a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV unless the subject of the test first provides informed consent for testing or disclosure as specified under par. (b), except that consent to testing is not required for any of the following:

1. Except as provided in subd. 1g., a health care provider who procures, processes, distributes or uses a human body part or human tissue donated as specified under s. 157.06 (6) (a) or (b) shall, without obtaining consent to the testing, test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. If the validated test result of the donor from the test or series of tests performed is positive, the human body part or human tissue donated for use or proposed for donation may not be used.

1g. If a medical emergency, as determined by the attending physician of a potential donee and including a threat to the preservation of life of the potential donee, exists under which a human body part or human tissue that has been subjected to testing under subd. 1. is unavailable, the requirement of subd. 1. does not apply.

2. The department, a laboratory certified under 42 USC 263a or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining written consent to the testing, subject any body fluids or tissues to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

3. The medical director of a center for the developmentally disabled, as defined in s. 51.01 (3), or a mental health institute, as defined in s. 51.01 (12), may, without obtaining consent to the testing, subject a resident or patient of the center or institute to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV if he or she determines that the conduct of the resident or patient poses a significant risk of transmitting HIV to another resident or patient of the center or institute.

4. A health care provider may subject an individual to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, without obtaining consent to the testing from the individual, if all of the following apply:

a. The individual has been adjudicated incompetent under ch. 880, is under 14 years of age or is unable to give consent because he or she is unable to communicate due to a medical condition.

b. The health care provider obtains consent for the testing from the individual's guardian, if the individual is adjudicated incompetent under ch. 880; from the individual's parent or guardian, if the individual is under 14 years of age; or from the individual's closest living relative or another with whom the individual has a meaningful social and emotional relationship if the individual is not a minor nor adjudicated incompetent.

6. A health care professional acting under an order of the court under subd. 7. or s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining consent to the testing, subject an individual to a test or a series of tests to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. No sample used for laboratory test purposes under this subdivision may disclose the name of the test subject, and, notwithstanding

Sub. (4) (c), the test results may not be made part of the individual's permanent medical record.

7. a. If all of the conditions under subd. 7. ai. to c. are met, an emergency medical technician, first responder, fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, during the course of providing care or services to an individual; or a peace officer, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, while searching or arresting an individual or while controlling or transferring an individual in custody; or a health care provider or an employee of a health care provider who, during the course of providing care or treatment to an individual or handling or processing specimens of body fluids or tissues of an individual; or a staff member of a state crime laboratory who, during the course of handling or processing specimens of body fluids or tissues of an individual; is significantly exposed to the individual may subject the individual's blood to a test or a series of tests for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and may receive disclosure of the results.

ai. The affected person uses universal precautions, if any, against significant exposure, and was using universal precautions at the time that he or she was significantly exposed, except in those emergency circumstances in which the time necessary for use of the universal precautions would endanger the life of the individual.

ak. A physician, based on information provided to the physician, determines and certifies in writing that the affected person has been significantly exposed. The certification shall accompany the request for testing and disclosure. If the affected person who is significantly exposed is a physician, he or she may not make this determination or certification. The information that is provided to a physician to document the occurrence of a significant exposure and the physician's certification that an affected person has been significantly exposed, under this subd. 7. ak., shall be provided on a report form that is developed by the department of commerce under s. 101.02 (19) (a) or on a report form that the department of commerce determines, under s. 101.02 (19) (b), is substantially equivalent to the report form that is developed under s. 101.02 (19) (a).

am. The affected person submits to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, as soon as feasible or within a time period established by the department after consulting guidelines of the centers for disease control of the federal public health service, whichever is earlier.

ap. Except as provided in subd. 7. av. to c., the test is performed on blood that is drawn for a purpose other than testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV.

ar. The individual, if capable of consenting, has been given an opportunity to be tested with his or her consent and has not consented.

at. The individual has been informed that his or her blood may be tested for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV; that the test results may be disclosed to no one, including that individual, without his or her consent, except to the person who is certified to have been significantly exposed; that, if the person knows the identity of the individual, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed; and that a record may be kept of the test results only if the record does not reveal the individual's identity.

av. If blood that is specified in subd. 7. ap. is unavailable, the person who is certified under subd. 7. ak. to have been significantly exposed may request the district attorney to apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and to disclose the results to that person. The person who is certified under subd. 7. ak. to have been significantly exposed shall accompany the request with the certification under subd. 7. ak.

b. Upon receipt of a request and certification under the requirements of this subdivision, a district attorney shall, as soon

as possible so as to enable the court to provide timely notice, apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests as specified in subd. 7. a., administered by a health care professional, and to disclose the results of the test or tests as specified in subd. 7. c.

c. The court shall set a time for a hearing on the matter under subd. 7. a. within 20 days after receipt of a request under subd. 7. b. The court shall give the district attorney and the individual from whom a test is sought notice of the hearing at least 72 hours prior to the hearing. The individual may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the individual has significantly exposed the affected person, the court shall, except as provided in subd. 7. d., order the individual to submit to a test or a series of tests for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. The court shall require the health care professional who performs the test or series of tests to refrain from disclosing the test results to the individual and to disclose the test results to the affected person and his or her health care professional. No sample used for laboratory test purposes under this subd. 7. c. may disclose the name of the test subject.

d. The court is not required to order the individual to submit to a test under subd. 7. c. if the court finds substantial reason relating to the life or health of the individual not to do so and states the reason on the record.

7m. The test results of an individual under subd. 7. may be disclosed only to the individual, if he or she so consents, to anyone authorized by the individual and to the affected person who was certified to have been significantly exposed. A record may be retained of the test results only if the record does not reveal the individual's identity. If the affected person knows the identity of the individual whose blood was tested, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed.

(am) 1. A health care provider who procures, processes, distributes or uses human sperm donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable under s. 252.13 (1r) to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. The health care provider shall test the donor initially and, if the initial test result is negative, shall perform a 2nd test on a date that is not less than 180 days from the date of the procurement of the sperm. No person may use the donated sperm until the health care provider has obtained the results of the 2nd test. If any validated test result of the donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV is positive, the sperm donated for use may not be used and, if donated, shall be destroyed.

2. A health care provider who procures, processes, distributes or uses human ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended.

(b) The health care provider, blood bank, blood center or plasma center that subjects a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under pars. (a) and (am) shall, in instances under those paragraphs in which consent is required, provide the potential test subject with an informed consent form for testing or disclosure that shall contain the following information and on the form shall obtain the potential test subject's signature or may, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), instead obtain the signature of the health care agent:

1. The name of the potential test subject who is giving consent and whose test results may be disclosed and, if the potential test subject has executed a power of attorney for health care

instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the name of the health care agent.

2. A statement of explanation to the potential test subject that the test results may be disclosed as specified under Sub. (5) (a) and either a listing that duplicates the persons or circumstances specified under Sub. (5) (a) 2. to 19. or a statement that the listing is available upon request.

3. Spaces specifically designated for the following purposes:

a. The signature of the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), of the health care agent, providing informed consent for the testing and the date on which the consent is signed.

b. The name of a person to whom the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent, authorizes that disclosure of test results be made, if any, the date on which the consent to disclosure is signed, and the time period during which the consent to disclosure is effective.

(bm) The health care provider that subjects a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under par. (a) 3. shall provide the test subject and the test subject's guardian, if the test subject is incompetent under ch. 880, with all of the following information:

1. A statement of explanation concerning the test that was performed, the date of performance of the test and the test results.

2. A statement of explanation that the test results may be disclosed as specified under Sub. (5) (a) and either a listing that duplicates the persons or circumstances specified under Sub. (5) (a) 2. to 18. or a statement that the listing is available upon request.

(3) WRITTEN CONSENT TO DISCLOSURE. A person who receives a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under Sub. (2) (b) or, if the person has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent may authorize in writing a health care provider, blood bank, blood center or plasma center to disclose the person's test results to anyone at any time subsequent to providing informed consent for disclosure under Sub. (2) (b) and a record of this consent shall be maintained by the health care provider, blood bank, blood center or plasma center so authorized.

(4) RECORD MAINTENANCE. A health care provider, blood bank, blood center or plasma center that obtains from a person a specimen of body fluids or tissues for the purpose of testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV shall:

(a) Obtain from the subject informed consent for testing or disclosure, as provided under Sub. (2).

(b) Maintain a record of the consent received under par. (a).

(c) Maintain a record of the test results obtained. A record that is made under the circumstances described in Sub. (2) (a) 7m. may not reveal the identity of the test subject.

(5) CONFIDENTIALITY OF TEST. (a) An individual who is the subject of a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or the individual's health care agent, if the individual has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), may disclose the results of the individual's test to anyone. A person who is neither the individual nor the individual's health care agent may not, unless he or she is specifically authorized by the individual to do so, disclose the individual's test results except to the following persons or under the following circumstances:

1. To the subject of the test and, if the test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent.

2. To a health care provider who provides care to the test subject, including those instances in which a health care provider provides emergency care to the subject.

3. To an agent or employee of a health care provider under subd. 2. who prepares or stores patient health care records, as defined in s. 146.81 (4), for the purposes of preparation or storage of those records; provides patient care; or handles or processes specimens of body fluids or tissues.

4. To a blood bank, blood center or plasma center that subjects a person to a test under Sub. (2) (a), for any of the following purposes: a. Determining the medical acceptability of blood or plasma secured from the test subject. b. Notifying the test subject of the test results. c. Investigating HIV infections in blood or plasma.

5. To a health care provider who procures, processes, distributes or uses a human body part donated as specified under s. 157.06 (6) (a) or (b), for the purpose of assuring medical acceptability of the gift for the purpose intended.

6. To the state epidemiologist or his or her designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

7. To a funeral director, as defined under s. 445.01 (5) or to other persons who prepare the body of a decedent for burial or other disposition or to a person who performs an autopsy or assists in performing an autopsy.

8. To health care facility staff committees or accreditation or health care services review organizations for the purposes of conducting program monitoring and evaluation and health care services reviews.

9. Under a lawful order of a court of record except as provided under s. 901.05.

10. To a person who conducts research, for the purpose of research, if the researcher:

a. Is affiliated with a health care provider under subd. 3.

b. Has obtained permission to perform the research from an institutional review board.

c. Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose under which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

11. To a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim, if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for disclosure.

12. To a coroner, medical examiner or an appointed assistant to a coroner or medical examiner, if one or more of the following conditions exist:

a. The possible HIV-infected status is relevant to the cause of death of a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant.

b. The coroner, medical examiner or appointed assistant is significantly exposed to a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant, if a physician, based on information provided to the physician, determines and certifies in writing that the coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for disclosure.

13. To a sheriff, jailer or keeper of a prison, jail or house of correction or a person designated with custodial authority by the sheriff, jailer or keeper, for whom disclosure is necessitated in order to permit the assigning of a private cell to a prisoner who has a positive test result.

14. If the test results of a test administered to an individual are positive and the individual is deceased, by the individual's attending physician, to persons, if known to the physician, with whom the individual has had sexual contact or has shared intravenous drug use paraphernalia.

15. To anyone who provides consent for the testing under Sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only during a period in which the test subject is adjudicated incompetent under ch. 880, is under 14 years of age or is unable to communicate due to a medical condition.

17. To an alleged victim or victim, to a health care professional, upon request as specified in s. 938.296 (4) (e) or (5) (e) or 968.38 (4) (c) or (5) (c), who provides care to the alleged victim or victim and, if the alleged victim or victim is a minor, to the parent or

guardian of the alleged victim or victim, under s. 938.296 (4) or (5) or 968.38 (4) or (5).

18. To an affected person, under the requirements of Sub. (2) (a) 7.

19. If the test was administered to a child who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility, as defined in s. 938.02 (15m), including a placement under s. 48.205, 48.21, 938.205, or 938.21 or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child, or to an agency that placed the child or arranged for the placement of the child in any of those placements and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or arranged for the placement of the child in any of those placements, to the child's foster parent or treatment foster parent or the operator of the group home, residential care center for children and youth, or secured correctional facility in which the child is placed, as provided in s. 48.371 or 938.371.

NOTE: Subd. 19. is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2)(c).

20. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer to maintain prisoner medical records, if the disclosure is made with respect to the prisoner's patient health care records under s. 302.388, to the medical staff of a jail to whom the results are disclosed under s. 302.388 (2) (c) or (d), to the medical staff of a jail to which a prisoner is being transferred, if the results are provided to the medical staff by the department of corrections as part of the prisoner's medical file, to a health care provider to whom the results are disclosed under s. 302.388 (2) (c) or (d) or the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 (4).

(b) A private pay patient may deny access to disclosure of his or her test results granted under par. (a) 10. if he or she annually submits to the maintainer of his or her test results under Sub. (4) (c) a signed, written request that denial be made.

(5m) AUTOPSIES; TESTING OF CERTAIN CORPSES. Notwithstanding s. 157.05, a corpse may be subjected to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and the test results disclosed to the person who has been significantly exposed under any of the following conditions:

(a) If a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim and the emergency or accident victim subsequently dies prior to testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, and if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the coroner, medical examiner or physician who certifies the victim's cause of death under s. 69.18 (2) (b), (c) or (d).

(b) If a funeral director, coroner, medical examiner or appointed assistant to a coroner or medical examiner who prepares the corpse of a decedent for burial or other disposition or a person who performs an autopsy or assists in performing an autopsy is significantly exposed to the corpse, and if a physician, based on information provided to the physician, determines and certifies in writing that the funeral director, coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the

attending physician of the funeral director, coroner, medical examiner or appointed assistant who is so exposed.

(c) If a health care provider or an agent or employee of a health care provider is significantly exposed to the corpse or to a patient who dies subsequent to the exposure and prior to testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, and if a physician who is not the health care provider, based on information provided to the physician, determines and certifies in writing that the health care provider, agent or employee has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the physician who certifies that the significant exposure has occurred.

(5r) SALE OF TESTS WITHOUT APPROVAL PROHIBITED. No person may sell or offer to sell in this state a test or test kit to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV for self-use by an individual unless the test or test kit is first approved by the state epidemiologist. In reviewing a test or test kit under this subsection, the state epidemiologist shall consider and weigh the benefits, if any, to the public health of the test or test kit against the risks, if any, to the public health of the test or test kit.

(6) EXPANDED DISCLOSURE OF TEST RESULTS PROHIBITED. No person to whom the results of a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV have been disclosed under Sub. (5) (a) or (5m) may disclose the test results except as authorized under Sub. (5) (a) or (5m).

(7) REPORTING OF POSITIVE TEST RESULTS. (a) Notwithstanding ss. 227.01 (13) and 227.10 (1), for the purposes of this subsection, the state epidemiologist shall determine, based on the preponderance of available scientific evidence, the procedures necessary in this state to obtain a validated test result and the secretary shall so declare under s. 250.04 (1) or (2) (a). The state epidemiologist shall revise this determination if, in his or her opinion, changed available scientific evidence warrants a revision, and the secretary shall declare the revision under s. 250.04 (1) or (2) (a).

(b) If a positive, validated test result is obtained from a test subject, the health care provider, blood bank, blood center or plasma center that maintains a record of the test results under Sub. (4) (c) shall report to the state epidemiologist the following information:

1. The name and address of the health care provider, blood bank, blood center or plasma center reporting.

2. The name and address of the subject's health care provider, if known.

3. The name, address, telephone number, age or date of birth, race and ethnicity, sex and county of residence of the test subject, if known.

4. The date on which the test was performed.

5. The test result.

6. Any other medical or epidemiological information required by the state epidemiologist for the purpose of exercising surveillance, control and prevention of HIV infections.

(c) Except as provided in Sub. (7m), a report made under par. (b) may not include any of the following:

1. Information with respect to the sexual orientation of the test subject.

2. The identity of persons with whom the test subject may have had sexual contact.

(d) This subsection does not apply to the reporting of information under s. 252.05 with respect to persons for whom a diagnosis of acquired immuno-deficiency syndrome has been made.

(7m) REPORTING OF PERSONS SIGNIFICANTLY EXPOSED. If a positive, validated test result is obtained from a test subject, the test subject's physician who maintains a record of the test result under Sub. (4) (c) may report to the state epidemiologist the name of any person known to the physician to have been significantly exposed to the test subject, only after the physician has done all of the following:

(a) Counseled the test subject to inform any person who has been significantly exposed to the test subject.

(b) Notified the test subject that the name of any person known to the physician to have been significantly exposed to the test subject will be reported to the state epidemiologist.

(8) CIVIL LIABILITY. (a) Any person violating Sub. (2), (5) (a), (5m), (6) or (7) (c) is liable to the subject of the test for actual damages, costs and reasonable actual attorney fees, plus exemplary damages of up to \$1,000 for a negligent violation and up to \$25,000 for an intentional violation.

(b) The plaintiff in an action under par. (a) has the burden of proving by a preponderance of the evidence that a violation occurred under Sub. (2), (5) (a), (5m), (6) or (7) (c). A conviction under Sub. (2), (5) (a), (5m), (6) or (7) (c) is not a condition precedent to bringing an action under par. (a).

(9) PENALTIES. Whoever intentionally discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than \$25,000 or imprisoned not more than 9 months or both. Whoever negligently discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m) is subject to a forfeiture of not more than \$1,000 for each violation. Whoever intentionally discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m), knowing that

the information is confidential, and discloses the information for pecuniary gain may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both.

(10) DISCIPLINE OF EMPLOYEES. Any employee of the state or a political subdivision of the state who violates this section may be discharged or suspended without pay.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 199, 252, 393, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 17, 275; 1991 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74; s. 13.93 (2) (c).

No claim for a violation of Sub. (2) was stated when the defendants neither conducted HIV tests nor were authorized recipients of the test results. *Hillman v. Columbia County*, 164 Wis. 2d 376, 474 N.W.2d 913 (Ct. App. 1991).

This section does not prevent a court acting in equity from ordering an HIV test where this section does not apply. *Syring v. Tucker*, 174 Wis. 2d 787, 498 N.W.2d 370 (1993).

This section has no bearing on a case in which a letter from the plaintiff to the defendant pharmacy contained a reference to a drug used only to treat AIDS, but did not disclose the results of an HIV test or directly disclose that the defendant had AIDS. *Doe v. American Stores, Co.* 74 F. Supp. 2d 855 (1999).

Confidentiality of Medical Records. Meili. Wis. Law. Feb. 1995.

CHAPTER 440 DEPARTMENT OF REGULATION AND LICENSING

SUBCHAPTER I GENERAL PROVISIONS

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Cross reference: See also RL, Wis. adm. code.

SUBCHAPTER I GENERAL PROVISIONS

440.01 Definitions. (1) In chs. 440 to 480, unless the context requires otherwise:

(a) "Department" means the department of regulation and licensing.

(am) "Financial institution" has the meaning given in s. 705.01 (3).

(b) "Grant" means the substantive act of an examining board, section of an examining board, affiliated credentialing board or the department of approving the applicant for credentialing and the preparing, executing, signing or sealing of the credentialing.

(c) "Issue" means the procedural act of the department of transmitting the credential to the person who is credentialed.

(d) "Limit", when used in reference to limiting a credential, means to impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice.

(dm) "Renewal date" means the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authority conferred by the credential.

(e) "Reprimand" means to publicly warn the holder of a credential.

(f) "Revoke", when used in reference to revoking a credential, means to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

(g) "Secretary" means the secretary of regulation and licensing.

(h) "Suspend", when used in reference to suspending a credential, means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.

(2) In this subchapter: (a) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480.

(b) "Credentialing" means the acts of an examining board, section of an examining board, affiliated credentialing board or the department that relate to granting, issuing, denying, limiting, suspending or revoking a credential.

(bm) "Credentialing board" means an examining board or an affiliated credentialing board in the department.

(c) "Examining board" includes the board of nursing.

(cs) "Minority group member" has the meaning given in s. 560.036(1) (ff).

(cv) "Psychotherapy" has the meaning given in s. 457.01 (8m).

(d) "Reciprocal credential" means a credential granted by an examining board, section of an examining board, affiliated credentialing board or the department to an applicant who holds a credential issued by a governmental authority in a jurisdiction outside this state authorizing or qualifying the applicant to perform acts that are substantially the same as those acts authorized by the credential granted by the examining board, section of the examining board, affiliated credentialing board or department.

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102, 107; 1995 a. 233, 333; 1997 a. 35 s. 448; 1997 a. 237 ss. 532, 539m; 1999 a. 9 s. 2915; 2001 a. 80.

Procedural due process and the separation of functions in state occupational licensing agencies. 1974 WLR 833.

440.02 Bonds. Members of the staff of the department who are assigned by the secretary to collect moneys shall be bonded in an amount equal to the total receipts of the department for any month.

440.03 General duties and powers of the department.

(1) The department may promulgate rules defining uniform procedures to be used by the department, the real estate board, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(1m) The department may promulgate rules specifying the number of business days within which the department or any examining board or affiliated credentialing board in the department must review and make a determination on an application for a permit, as defined in s. 560.41 (2), that is issued under chs. 440 to 480.

(2) The department may provide examination development services, consultation and technical assistance to other state agencies, federal agencies, counties, cities, villages, towns, national or regional organizations of state credentialing agencies, similar credentialing agencies in other states, national or regional accrediting associations, and nonprofit organizations. The department may charge a fee sufficient to reimburse the department for the costs of providing such services. In this subsection, "nonprofit organization" means a nonprofit corporation as defined in s. 181.0103 (17), and an organization exempt from tax under 26 USC 501.

(3) If the secretary reorganizes the department, no modification may be made in the powers and responsibilities of the examining boards or affiliated credentialing boards attached to the department or an examining board under s. 15.405 or 15.406.

(3m) The department may investigate complaints made against a person who has been issued a credential under chs. 440 to 480.

(3q) Notwithstanding sub.(3m), the department of regulation and licensing shall investigate any report that it receives under s. 146.40 (4r) (am) 2. or (em).

(4) The department may issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement of disciplinary proceedings.

(5) The department may investigate allegations of negligence by physicians licensed to practice medicine and surgery under ch. 448.

(5m) The department shall maintain a toll-free telephone number to receive reports of allegations of unprofessional conduct, negligence or misconduct involving a physician licensed under subch. II of ch. 448. The department shall publicize the toll-free telephone number and the investigative powers and duties of the department and the medical examining board as widely as possible

in the state, including in hospitals, clinics, medical offices and other health care facilities.

(6) The department shall have access to any information contained in the reports filed with the medical examining board, an affiliated credentialing board attached to the medical examining board and the board of nursing under s. 655.045, as created by 1985 Wisconsin Act 29, and s. 655.26.

(7) The department shall establish the style, content and format of all credentials and of all forms for applying for any credential issued or renewed under chs. 440 to 480. All forms shall include a place for the information required under sub.(1)m (a). Upon request of any person who holds a credential and payment of a \$10 fee, the department may issue a wall certificate signed by the governor.

(7m) The department may promulgate rules that establish procedures for submitting an application for a credential or credential renewal by electronic transmission. Any rules promulgated under this subsection shall specify procedures for complying with any requirement that a fee be submitted with the application. The rules may also waive any requirement in chs. 440 to 480 that an application submitted to the department, an examining board or an affiliated credentialing board be executed, verified, signed, sworn or made under oath, notwithstanding ss. 440.26 (2) (b), 440.42 (2) (intro.), 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a), 445.04 (2), 445.08 (4), 445.095 (1) (a), 448.05 (7), 450.09 (1) (a), 452.10 (1) and 480.08 (2m).

(8) The department may promulgate rules requiring holders of certain credentials to do any of the following:

(a) Display the credential in a conspicuous place in the holder's office or place of practice or business, if the holder is not required by statute to do so.

(b) Post a notice in a conspicuous place in the holder's office or place of practice or business describing the procedures for filing a complaint against the holder.

(9) The department shall include all of the following with each biennial budget request that it makes under s. 16.42:

(a) A recalculation of the administrative and enforcement costs of the department that are attributable to the regulation of each occupation or business under chs. 440 to 480 and that are included in the budget request.

(b) A recommended change to each fee specified under s. 440.05 (1) for an initial credential for which an examination is not required, under s. 440.05 (2) for a reciprocal credential and under s. 440.08 (2) (a) for a credential renewal if the change is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential or credential renewal is in effect and, for purposes of the recommended change to each fee specified under s. 440.08 (2) (a) for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations, during the budget period to which the biennial budget request applies, as a result of appropriation transfers that have been or are estimated to be made under s. 20.165 (1) (i) prior to and during that budget period.

(11) The department shall cooperate with the department of health and family services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and family services in the evaluation of community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

(11m) (a) Each application form for a credential issued or renewed under chs. 440 to 480 shall provide a space for the department to require each of the following, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under par.(am), to provide his or her social security number:

1. An applicant for an initial credential or credential renewal. If the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

2. An applicant for reinstatement of an inactive license under s. 452.12 (6) (m).

(am) If an applicant specified in par.(a) 1. or 2. is an individual who does not have a social security number, the applicant shall

submit a statement made or subscribed under oath that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A credential or license issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The department shall deny an application for an initial credential or deny an application for credential renewal or for reinstatement of an inactive license under s. 452.12 (6) (e) if any information required under par.(a) is not included in the application form or, in the case of an applicant who is an individual and who does not have a social security number, if the statement required under par.(am) is not included with the application form.

(c) The department of regulation and licensing may not disclose a social security number obtained under par.(a) to any person except the coordinated licensure information system under s. 441.50 (7); the department of workforce development for purposes of administering s. 49.22; and, for a social security number obtained under par.(a) 1., the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(12m) The department of regulation and licensing shall cooperate with the departments of justice and health and family services in developing and maintaining a computer linkup to provide access to information regarding the current status of a credential issued to any person by the department of regulation and licensing, including whether that credential has been restricted in any way.

(13) The department may conduct an investigation to determine whether an applicant for a credential issued under chs. 440 to 480 satisfies any of the eligibility requirements specified for the credential, including whether the applicant does not have an arrest or conviction record. In conducting an investigation under this subsection, the department may require an applicant to provide any information that is necessary for the investigation or, for the purpose of obtaining information related to an arrest or conviction record of an applicant, to complete forms provided by the department of justice or the federal bureau of investigation. The department shall charge the applicant any fees, costs or other expenses incurred in conducting the investigation under this subsection.

(14) (a) 1. The department shall grant a certificate of registration as a music therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a music therapist by the Certification Board for Music Therapists, National Music Therapy Registry, American Music Therapy Association or by another national organization that certifies, registers or accredits music therapists.

b. The organization that certified, registered or accredited the person under subd. 1. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.1. a.

2. The department shall grant a certificate of registration as an art therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as an art therapist by the Art Therapy Credentials Board or by another national organization that certifies, registers or accredits art therapists.

b. The organization that certified, registered or accredited the person under subd.2. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.2. a.

3. The department shall grant a certificate of registration as a dance therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a dance therapist by the American Dance Therapy Association or by another national organization that certifies, registers or accredits dance therapists.

b. The organization that certified, registered or accredited the person under subd.3. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that

he or she **is** certified, registered or accredited as required under subd.3. a.

(am) The department may promulgate rules that establish requirements for granting a license to practice psychotherapy to a person who is registered under par.(a). Rules promulgated under this paragraph shall establish requirements for obtaining such a license that are comparable to the requirements for obtaining a clinical social worker, marriage and family therapist, or professional counselor license under ch. 457. If the department promulgates rules under this paragraph, the department shall grant a license under this paragraph to a person registered under par.(a) who pays the fee specified in s. 440.05 (1) and provides evidence satisfactory to the department that he or she satisfies the requirements established in the rules.

(b) A person who is registered under par.(a) shall notify the department in writing within 30 days if an organization specified in par.(a) 1. a., 2. a. or 3. a. revokes the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a., or 3. a. The department shall revoke a certificate of registration granted under par.(a) if such an organization revokes such a certification, registration, or accreditation. If the department revokes the certificate of registration of a person who also holds a license granted under the rules promulgated under par.(am), the department shall also revoke the license.

(c) The renewal dates for certificates granted under par.(a) and licenses granted under par.(am) are specified in s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee specified in s. 440.08 (2) (a) and evidence satisfactory to the department that the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a. or 3. a. has not been revoked.

(d) The department shall promulgate rules that specify the services within the scope of practice of music, art, or dance therapy that a person who is registered under par.(a) is qualified to perform. The rules may not allow a person registered under par.(a) to perform psychotherapy unless the person is granted a license under the rules promulgated under par.(am).

Cross reference: See also chs. RL 140, 141, and 142, Wis. adm. code.

(e) Subject to the rules promulgated under sub.(1), the department may make investigations and conduct hearings to determine whether a violation of this subsection or any rule promulgated under par.(d) has occurred and may reprimand a person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) or may deny, limit, suspend, or revoke a certificate of registration granted under par.(a) or a license granted under the rules promulgated under par.(am) if the department finds that the applicant or certificate or license holder has violated this subsection or any rule promulgated under par.(d).

(f) A person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) who violates this subsection or any rule promulgated under par.(d) may be fined not more than \$200 or imprisoned for not more than 6 months or both.

(15) The department shall promulgate rules that establish the fees specified in ss. 440.05 (10) and 440.08 (2) (d).

(16) Annually, the department shall distribute the form developed by the medical and optometry examining boards under 2001 Wisconsin Act 16, section 9143 (3c), to all school districts and charter schools that offer kindergarten, to be used by pupils to provide evidence of eye examinations under s. 118.135.

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31, 340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 64723, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231, 237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80.

Cross reference: See also RL, Wis. adm. code.

440.035 General duties of examining boards and affiliated credentialing boards. Each examining board or affiliated credentialing board attached to the department or an examining board shall:

(1) Independently exercise its powers, duties and functions prescribed by law with regard to rule-making, credentialing and regulation.

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling

of information regarding qualifications of applicants for credentials, examination questions and answers, accreditation, related investigations and disciplinary matters affecting persons who are credentialed by the examining board or affiliated credentialing board, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to the qualifications or discipline of applicants or persons who are credentialed by the examining board, affiliated credentialing board or accreditation.

(3) Maintain, in conjunction with their operations, in central locations designated by the department, all records pertaining to the functions independently retained by them.

(4) Compile and keep current a register of the names and addresses of all persons who are credentialed to be retained by the department and which shall be available for public inspection during the times specified in s. 230.35 (4) (a). The department may also make the register available to the public by electronic transmission.

History: 1977 c. 418 ss. 25, 793, 929 (41); 1979 c. 32 s. 92 (1); 1979 c. 34; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 107; 1997 a. 27, 191, 237.

440.04 Duties of the secretary. The secretary shall: (1) Centralize, at the capital and in such district offices as the operations of the department and the attached examining boards and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated credentialing boards.

(2) Provide the bookkeeping, payroll, accounting and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(5) With the advice of the examining boards or affiliated credentialing boards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

(8) Collect data related to the registration of speech-language pathologists and audiologists under subch. III of ch. 459 and, on January 15, 1993, report the data and recommendations on whether the licensure of speech-language pathologists and audiologists under subch. II of ch. 459 is appropriate to the chief clerk of each house of the legislature for distribution in the manner provided under s. 13.172 (2).

(9) Annually prepare and submit a report to the legislature under s. 13.172 (2) on the number of minority group members who applied for licensure as a certified public accountant under ch. 442, the number who passed the examination required for licensure as a certified public accountant and the number who were issued a certified public accountant license under ch. 442, during the preceding year.

History: 1977 c. 418s. 26; 1979 c. 34; 1981 c. 20; 1985 a. 29; 1987 a. 27; 1989 a. 316; 1991 a. 39; 1993 a. 102, 107; 1995 a. 333.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory committee to advise the department on matters relating to carrying out the duties specified in s. 440.982 and making investigations, conducting hearings and taking disciplinary action under s. 440.986. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his

or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: 1993 a. 16 ss. 3269, 3299; 1993 a. 107; 1997 a. 156; 1999 a. 32.

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing board and the secretary shall be arbitrated by the governor or the governor's designee after consultation with the disputants.

History: 1977 c. 418 s. 27; 1979 c. 34; 1993 a. 107.

The relationship between the department, cosmetology examining board, and governor is discussed. 70 Atty. Gen. 172.

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.05, 444.11, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46:

(1) (a) Initial credential: \$53. Each applicant for an initial credential shall pay the initial credential fee to the department when the application materials for the initial credential are submitted to the department.

(b) Examination: If an examination is required, the applicant shall pay an examination fee to the department. If the department prepares, administers, or grades the examination, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of preparing, administering, or grading the examination. If the department approves an examination prepared, administered, and graded by a test service provider, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of approving the examination, including selecting, evaluating, and reviewing the examination.

(2) Reciprocal credential, including any credential described in s. 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: The applicable credential renewal fee under s. 440.08 (2) (a) and, if an examination is required, an examination fee under sub.(1).

(6) Apprentice, journeyman, student or other temporary credential, granted pending completion of education, apprenticeship or examination requirements: \$10.

(7) Replacement of lost credential, name or address change on credential, issuance of duplicate credential or transfer of credential: \$10.

(9) Endorsement of persons who are credentialed to other states: \$10.

(10) Expedited service: If an applicant for a credential requests that the department process an application on an expedited basis, the applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

History: 1977 c. 29, 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1983 a. 27; 1985 a. 29; 1987 a. 264, 265, 329, 399, 403; 1989 a. 31, 229, 307, 316, 336, 340, 341, 359; 1991 a. 39, 269, 278, 315; 1993 a. 16; 1995 a. 27; 1997 a. 27, 96; 1999 a. 9; 2001 a. 16.

Cross reference: See also ch. RL 4, Wis. adm. code.

440.055 Credit card payments. (2) If the department permits the payment of a fee with use of a credit card, the department shall charge a credit card service charge for each transaction. The credit card service charge shall be in addition to the fee that is being paid with the credit card and shall be sufficient to pay the costs to the department for providing this service to persons who request it, including the cost of any services for which the department contracts under sub.(3).

(3) The department may contract for services relating to the payment of fees by credit card under this section.

History: 1995 a. 27; 1999 a. 9.

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 or 440.08 and uniform procedures and fees for reexaminations under chs. 440 to 480.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 4, Wis. adm. code.

440.07 Examination standards and services. (1) In addition to the standards specified in chs. 440 to 480, examinations for credentials shall reasonably relate to the skills likely to be needed for an applicant to practice in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise the skills.

(2) The department, examining board or affiliated credentialing board having authority to credential applicants may do any of the following:

(a) Prepare, administer and grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

(3) The department may charge a fee to an applicant for a credential who fails an examination required for the credential and requests a review of his or her examination results. The fee shall be based on the cost of the review. No fee may be charged for the review unless the amount of the fee or the procedure for determining the amount of the fee is specified in rules promulgated by the department.

History: 1987 a. 27; 1991 a. 39; 1993 a. 102, 107.

Cross reference: See also ch. RL 4, Wis. adm. code. Department of Regulation and Licensing test scores were subject to disclosure under the open records law. *Munroe v. Braatz*, 201 Wis. 2d 442, 549 N.W.2d 452 (Ct. App. 1996).

440.08 Credential renewal. (1) **NOTICE OF RENEWAL.** The department shall give a notice of renewal to each holder of a credential at least 30 days prior to the renewal date of the credential. Notice may be mailed to the last address provided to the department by the credential holder or may be given by electronic transmission. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against the holder for practicing without a credential. Failure to receive a notice of renewal does not relieve the holder from the obligation to pay a penalty for late renewal under sub.(3).

(2) **RENEWAL DATES, FEES AND APPLICATIONS.** (a) Except as provided in par.(b) and in ss. 440.51, 442.04, 444.03, 444.05, 444.11, 448.065, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46, the renewal dates and renewal fees for credentials are as follows:

1. Accountant, certified public: January 1 of each even-numbered year; \$59.

3. Accounting corporation or partnership: January 1 of each even-numbered year; \$56.

4. Acupuncturist: July 1 of each odd-numbered year; \$70.

4m. Advanced practice nurse prescriber: October 1 of each even-numbered year; \$73.

5. Aesthetician: July 1 of each odd-numbered year; \$87.

6. Aesthetics establishment: July 1 of each odd-numbered year; \$70.

7. Aesthetics instructor: July 1 of each odd-numbered year; \$70.

8. Aesthetics school: July 1 of each odd-numbered year; \$115.

9. Aesthetics specialty school: July 1 of each odd-numbered year; \$53.

11. Appraiser, real estate, certified general: January 1 of each even-numbered year; \$162.

11m. Appraiser, real estate, certified residential: January 1 of each even-numbered year; \$167.

12. Appraiser, real estate, licensed: January 1 of each even-numbered year; \$185.

13. Architect: August 1 of each even-numbered year; \$60.

14. Architectural or engineering firm, partnership or corporation: February 1 of each even-numbered year; \$70.

14f. Athletic trainer: July 1 of each even-numbered year; \$53.

14g. Auction company: January 1 of each odd-numbered year; \$56.

14r. Auctioneer: January 1 of each odd-numbered year; \$174.

15. Audiologist: February 1 of each odd-numbered year; \$106.

16. Barbering or cosmetology establishment: July 1 of each odd-numbered year; \$56.

17. Barbering or cosmetology instructor: July 1 of each odd-numbered year; \$91.
18. Barbering or cosmetology manager: July 1 of each odd-numbered year; \$71.
19. Barbering or cosmetology school: July 1 of each odd-numbered year; \$138.
20. Barber or cosmetologist: July 1 of each odd-numbered year; \$63.
21. Cemetery authority: January 1 of each odd-numbered year; \$343.
22. Cemetery preneed seller: January 1 of each odd-numbered year; \$61.
23. Cemetery salesperson: January 1 of each odd-numbered year; \$90.
- 23m. Charitable organization: August 1 of each year; \$15.
24. Chiropractor: January 1 of each odd-numbered year; \$168.
25. Dental hygienist: October 1 of each odd-numbered year; \$57.
26. Dentist: October 1 of each odd-numbered year; \$131.
- 26m. Dentist, faculty member: October 1 of each odd-numbered year; \$131.
27. Designer of engineering systems: February 1 of each even-numbered year; \$58.
- 27m. Dietitian: November 1 of each even-numbered year; \$56.
28. Drug distributor: June 1 of each even-numbered year; \$70.
29. Drug manufacturer: June 1 of each even-numbered year; \$70.
30. Electrologist: July 1 of each odd-numbered year; \$76.
31. Electrology establishment: July 1 of each odd-numbered year; \$56.
32. Electrology instructor: July 1 of each odd-numbered year; \$86.
33. Electrology school: July 1 of each odd-numbered year; \$71.
34. Electrology specialty school: July 1 of each odd-numbered year; \$53.
35. Engineer, professional: August 1 of each even-numbered year; \$58.
- 35m. Fund-raising counsel: September 1 of each even-numbered year; \$53.
36. Funeral director: January 1 of each even-numbered year; \$135.
37. Funeral establishment: June 1 of each odd-numbered year; \$56.
38. Hearing instrument specialist: February 1 of each odd-numbered year; \$106.
- 38g. Home inspector: January 1 of each odd-numbered year; \$53.
- 38m. Landscape architect: August 1 of each even-numbered year; \$56.
39. Land surveyor: February 1 of each even-numbered year; \$77.
42. Manicuring establishment: July 1 of each odd-numbered year; \$53.
43. Manicuring instructor: July 1 of each odd-numbered year; \$53.
44. Manicuring school: July 1 of each odd-numbered year; \$118.
45. Manicuring specialty school: July 1 of each odd-numbered year; \$53.
46. Manicurist: July 1 of each odd-numbered year; \$133.
- 46m. Marriage and family therapist: July 1 of each odd-numbered year; \$84.
- 46r. Massage therapist or bodyworker: March 1 of each odd-numbered year; \$53.
- NOTE: Subd. 46r. is created eff. 3-1-03 by 2001 Wis. Act 74.**
48. Nurse, licensed practical: May 1 of each odd-numbered year; \$69.
49. Nurse, registered: March 1 of each even-numbered year; \$66.
50. Nurse-midwife: March 1 of each even-numbered year; \$70.
51. Nursing home administrator: July 1 of each even-numbered year; \$120.
52. Occupational therapist: November 1 of each odd-numbered year; \$59.
53. Occupational therapy assistant: November 1 of each odd-numbered year; \$62.
54. Optometrist: January 1 of each even-numbered year; \$65.
- 54m. Perfusionist: November 1 of each odd-numbered year; \$56.
55. Pharmacist: June 1 of each even-numbered year; \$97.
56. Pharmacy: June 1 of each even-numbered year; \$56.
57. Physical therapist: November 1 of each odd-numbered year; \$62.
- 57m. Physical therapist assistant: November 1 of each odd-numbered year; \$44.
- NOTE: Subd. 57m. is created eff. 4-1-04 by 2001 Wis. Act 70.**
58. Physician: November 1 of each odd-numbered year; \$106.
59. Physician assistant: November 1 of each odd-numbered year; \$72.
60. Podiatrist: November 1 of each odd-numbered year; \$150.
61. Private detective: September 1 of each even-numbered year; \$101.
62. Private detective agency: September 1 of each even-numbered year; \$53.
63. Private practice school psychologist: October 1 of each odd-numbered year; \$103.
- 63g. Private security person: September 1 of each even-numbered year; \$53.
- 63m. Professional counselor: July 1 of each odd-numbered year; \$76.
- 63t. Professional fund-raiser: September 1 of each even-numbered year; \$93.
- 63u. Professional geologist: August 1 of each even-numbered year; \$59.
- 63v. Professional geology, hydrology or soil science firm, partnership or corporation: August 1 of each even-numbered year; \$53.
- 63w. Professional hydrologist: August 1 of each even-numbered year; \$53.
- 63x. Professional soil scientist: August 1 of each even-numbered year; \$53.
64. Psychologist: October 1 of each odd-numbered year; \$157.
65. Real estate broker: January 1 of each odd-numbered year; \$128.
66. Real estate business entity: January 1 of each odd-numbered year; \$56.
67. Real estate salesperson: January 1 of each odd-numbered year; \$83.
- 67m. Registered interior designer: August 1 of each even-numbered year; \$56.
- 67q. Registered massage therapist or bodyworker: March 1 of each odd-numbered year; \$53.
- NOTE: Subd. 67q. is repealed eff. 3-1-03 by 2001 Wis. Act 74.**
- 67v. Registered music, art or dance therapist: October 1 of each odd-numbered year; \$53.
- 67x. Registered music, art, or dance therapist with psychotherapy license: October 1 of each odd-numbered year; \$53.
68. Respiratory care practitioner: November 1 of each odd-numbered year; \$65.
- 68d. Social worker: July 1 of each odd-numbered year; \$63.
- 68h. Social worker, advanced practice: July 1 of each odd-numbered year; \$70.
- 68p. Social worker, independent: July 1 of each odd-numbered year; \$58.
- 68t. Social worker, independent clinical: July 1 of each odd-numbered year; \$73.
- 68v. Speech-language pathologist: February 1 of each odd-numbered year; \$63.
69. Time-share salesperson: January 1 of each odd-numbered year; \$119.
70. Veterinarian: January 1 of each even-numbered year; \$105.
71. Veterinary technician: January 1 of each even-numbered year; \$58.
- (b) The renewal fee for an apprentice, journeyman, student or temporary credential is \$10. The renewal dates specified in par.(a) do not apply to apprentice, journeyman, student or temporary credentials.
- (c) Except as provided in sub.(3), renewal applications shall include the applicable renewal fee specified in pars.(a) and (b).
- (d) If an applicant for credential renewal requests that the department process an application on an expedited basis, the

applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

(3) LATE RENEWAL.(a) Except as provided in rules promulgated under par.(b), if the department does not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee specified in sub.(2) (a) and by payment of a late renewal fee of \$25.

(b) The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines is necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

(4) DENIAL OF CREDENTIAL RENEWAL.(a) **Generally.** If the department or the interested examining board or affiliated credentialing board, as appropriate, determines that an applicant for renewal has failed to comply with sub.(2) (c) or (3) or with any other applicable requirement for renewal established under chs. 440 to 480 or that the denial of an application for renewal of a credential is necessary to protect the public health, safety or welfare, the department, examining board or affiliated credentialing board may summarily deny the application for renewal by mailing to the holder of the credential a notice of denial that includes a statement of the facts or conduct that warrant the denial and a notice that the holder may, within 30 days after the date on which the notice of denial is mailed, file a written request with the department to have the denial reviewed at a hearing before the department, if the department issued the credential, or before the examining board or affiliated credentialing board that issued the credential.

(b) **Applicability.** This subsection does not apply to a denial of a credential renewal under s. 440.12 or 440.13 (2) (b).

History: 1991 a. 39 ss. 3305, 3313; 1991 a. 78, 160, 167, 269, 278, 315; 1993 a. 3, 16, 102, 105, 107, 443, 463, 465; 1993 a. 490 ss. 228 to 230, 274, 275; 1995 a. 27, 233, 321, 322, 441; 1997 a. 27, 75, 81, 96, 156, 191, 237, 261, 300; 1999 a. 9, 32; 2001 a. 16, 70, 74, 80, 89.

440.11 Change of name or address. (1) An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last-known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.

(3) Any person who fails to comply with sub.(1) shall be subject to a forfeiture of \$50.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

440.12 Credential denial, nonrenewal and revocation based on tax delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

History: 1997 a. 237.

Cross reference: See also ch. RL 9, Wis. adm. code.

440.13 Delinquency in support payments; failure to comply with subpoena or warrant. (1) In this section:

(b) **"*Memorandum of understanding"** means a memorandum of understanding entered into by the department of regulation and licensing and the department of workforce development under s. 49.857.

(c) **"Support"** has the meaning given in s. 49.857 (1) (g).

(2) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of an initial credential or credential renewal, as provided in the memorandum of understanding:

(a) With respect to a credential granted by the department, the department shall restrict, limit or suspend a credential or deny an application for an initial credential or for reinstatement of an inactive license under s. 452.12 (6) (e) if the credential holder or applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(b) With respect to credential renewal, the department shall deny an application for renewal if the applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(c) With respect to a credential granted by a credentialing board, a credentialing board shall restrict, limit or suspend a credential held by a person or deny an application for an initial credential when directed to do so by the department.

History: 1997 a. 191, 237.

440.14 Nondisclosure of certain personal information.

(1) In this section: (a) **"List"** means information compiled or maintained by the department or a credentialing board that contains the personal identifiers of 10 or more individuals.

(b) **"Personal identifier"** means a name, social security number, telephone number, street address, post-office box number or 9-digit extended zip code.

(2) If a form that the department or a credentialing board requires an individual to complete in order to apply for a credential or credential renewal or to obtain a product or service from the department or the credentialing board requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or the credentialing board from the information on the form may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(3) If the department or a credentialing board requires an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to apply for a credential or credential renewal or to obtain a product or service from the department or a credentialing board, the department or the credentialing board shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(4) The department or a credentialing board shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or credentialing board may not be disclosed on any list that the department or credentialing board furnishes to another person.

(5) (a) The department or a credentialing board may not disclose on any list that it furnishes to another person a personal identifier of any individual who has made a declaration under sub.(2), (3) or (4).

(b) Paragraph (a) does not apply to a list that the department or a credentialing board furnishes to another state agency, a law enforcement agency or a federal governmental agency. In addition, par.(a) does not apply to a list that the department or the board of nursing furnishes to the coordinated licensure information system under s. 441.50 (7). A state agency that receives a list from the department or a credentialing board containing a personal identifier of any individual who has made a declaration under sub.(2), (3) or (4) may not disclose the personal

identifier to any person other than a state agency, a law enforcement agency or a federal governmental agency.

History: 1999 a. 88; 2001 a. 66.

440.142 Reporting potential causes of public health emergency. (1) A pharmacist or pharmacy shall report to the department of health and family services all of the following:

(a) An unusual increase in the number of prescriptions dispensed or nonprescription drug products sold for the treatment of medical conditions specified by the department of health and family services by rule under s. 252.02 (7).

(b) An unusual increase in the number of prescriptions dispensed that are antibiotic drugs.

(c) The dispensing of a prescription for treatment of a disease that is relatively uncommon or may be associated with bioterrorism, as defined in s. 166.02 (Ir).

(2) (a) Except as provided in par.(b), a pharmacist or pharmacy may not report personally identifying information concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

(b) Upon request by the department of health and family services, a pharmacist or pharmacy shall report to that department personally identifying information other than a social security number concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

History: 2001 a. 109.

440.20 Disciplinary proceedings. (1) Any person may file a complaint before the department or any examining board, affiliated credentialing board or board in the department and request the department, examining board, affiliated credentialing board or board to commence disciplinary proceedings against any holder of a credential.

(3) The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence.

(4) In addition to any grounds for discipline specified in chs. 440 to 480, the department or appropriate examining board, affiliated credentialing board or board in the department may reprimand the holder of a credential or deny, limit, suspend or revoke the credential of any person who intentionally violates s. 252.14 (2) or intentionally discloses the results of a blood test in violation of s. 252.15 (5) (a) or (5m).

History: 1977 c. 418; 1979 c. 34; 1985 a. 29; 1989 a. 31, 201; 1991 a. 39; 1993 a. 16, 27, 102, 107, 490.

The constitutionality of sub.(3) is upheld. *Gandhi v. Medical Examining Board*, 168 Wis. 2d 299, 483 N.W.2d 295 (Ct. App. 1992).

A hearing is not required for a complaint filed under this section. 68 Atty. Gen. 30. The "preponderance of the evidence" burden of proof under sub.(3) does not violate the due process rights of a licensee. 75 Atty. Gen. 76.

440.205 Administrative warnings. If the department or a board, examining board or affiliated credentialing board in the department determines during an investigation that there is evidence of misconduct by a credential holder, the department, board, examining board or affiliated credentialing board may close the investigation by issuing an administrative warning to the credential holder. The department or a board, examining board or affiliated credentialing board may issue an administrative warning under this section only if the department or board, examining board or affiliated credentialing board determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action. If an administrative warning is issued, the credential holder may obtain a review of the administrative warning through a personal appearance before the department, board, examining board or affiliated credentialing board that issued the administrative warning. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct by the credential holder is received by the department or a board, examining board or affiliated credentialing board in the department, the matter relating to the issuance of the administrative warning may be reopened and

disciplinary proceedings may be commenced on the matter, or the administrative warning may be used in any subsequent disciplinary proceeding as evidence that the credential holder had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law. The record that an administrative warning was issued shall be a public record. The contents of the administrative warning shall be private and confidential. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

History: 1997 a. 139.

Cross reference: See also ch. RL 8, Wis. adm. code.

440.21 Enforcement of laws requiring credential. (1) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

(3) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.

(4) (a) Any person who violates a special order issued under sub.(2) may be required to forfeit not more than \$10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub.(3) may be fined not less than \$25 nor more than \$5,000 or imprisoned for not more than one year in the county jail or both.

History: 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 3, Wis. adm. code.

440.22 Assessment of costs. (1) In this section, "costs of the proceeding" means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated credentialing board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators, and compensation and expenses of a reporter for recording and transcribing testimony.

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of 12% per year beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board or board. Upon the request of the department of regulation and licensing, the department of justice may commence an action to recover costs assessed under this subsection and any accrued interest.

(3) In addition to any other discipline imposed, if the department, examining board, affiliated credentialing board or board assesses costs of the proceeding to the holder of the credential under sub.(2), the department, examining board, affiliated credentialing board or board may not restore, renew or otherwise issue any credential to the holder until the holder has made payment to the department under sub.(2) in the full amount assessed, together with any accrued interest.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

The collection of costs assessed under this section may not be pursued in an independent action for a money judgment. The costs may be collected only as a

condition of reinstatement of the disciplined practitioner's credentials. *State v. Dunn*, 213 Wis. 2d 363, 570 N.W.2d 614 (Ct. App. 1997).

440.23 Cancellation of credential; reinstatement. (1) If the holder of a credential pays a fee required under s. 440.05 (1) or (6), 440.08, 444.03, 444.05, 444.11 or 459.46 (2) (b) by check or debit or credit card and the check is not paid by the financial institution upon which the check is drawn or if the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may cancel the credential on or after the 60th day after the department receives the notice from the financial institution, subject to sub.(2).

(2) At least 20 days before canceling a credential, the department shall mail a notice to the holder of the credential that informs the holder that the check or demand for payment under the debit or credit card transaction was not paid by the financial institution and that the holder's credential may be canceled on the date determined under sub.(1) unless the holder does all of the following before that date:

(a) Pays the fee for which the unpaid check or demand for payment under the credit or debit card transaction was issued.

(b) If the fee paid under par.(a) is for renewal and the credential has expired, pays the applicable penalty for late renewal specified in s. 440.08 (3).

(c) Pays the charge for an unpaid draft established by the depository selection board under s. 20.905 (2).

(3) Nothing in sub.(1) or (2) prohibits the department from extending the date for cancellation to allow the holder additional time to comply with sub.(2) (a) to (c).

(4) A cancellation of a credential under this section completely terminates the credential and all rights, privileges and authority previously conferred by the credential.

(5) The department may reinstate a credential that has been canceled under this section only if the previous holder complies with sub.(2) (a) to (c) and pays a \$30 reinstatement fee.

History: 1989 a. 31; 1991 a. 39, 189,269,278,315; 1993 a. 16; 1995 a. 27; 1999 a. 9.

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining board or affiliated credentialing board attached to the medical examining board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the medical examining board or the interested affiliated credentialing board, the attorney general may represent the board. If the attorney general declines to represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

History: 1985 a. 340; 1993 a. 107.

CHAPTER 448 MEDICAL PRACTICES

SUBCHAPTER IV PODIATRISTS AFFILIATED CREDENTIALING BOARD

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Cross reference: See also Pod, Wis. adm code.

448.60 Definitions. In this subchapter: (1) “Affiliated credentialing board” means the podiatrists affiliated credentialing board.

(2) “Licensee” means a person who is licensed under this subchapter.

(3) “Podiatrist” means an individual possessing the degree of doctor of podiatric medicine or doctor of surgical chiropody or equivalent degree as determined by the affiliated credentialing board, and holding a license to practice podiatry or podiatric medicine and surgery granted by the affiliated credentialing board.

(4) “Podiatry” or “podiatric medicine and surgery” means that branch or system of treating the sick which is limited to the diagnosis, or mechanical, medical or surgical treatment or treatment by use of drugs, of the feet, but does not include amputations other than digits of the foot or the use of a general anesthetic unless administered by or under the direction of a person licensed to practice medicine and surgery under subch. II. Diagnosis or treatment shall include no portion of the body above the feet except that diagnosis and treatment shall include the tendons and muscles of the lower leg insofar as they shall be involved in conditions of the feet.

(5) “Unprofessional conduct” means an act or attempted act of commission or omission, as defined by the affiliated credentialing board by rule under s. 448.695 (1), or an act by a podiatrist in violation of ch. 450 or 961.

History: 1997 a. 175 ss. 21, 22, 69.

448.61 License required. Except as provided in s. 448.62, no person may practice podiatry, designate himself or herself as a podiatrist, use or assume the title “doctor of surgical chiropody”, “doctor of podiatry” or “doctor of podiatric medicine”, or append to the person’s name the words or letters “doctor”, “Dr.”, “D.S.C.”, “D.P.M.”, “foot doctor”, “foot specialist” or any other title, letters or designation which represents or may tend to represent the person as a podiatrist unless the person is licensed under this subchapter.

History: 1997 a. 175.

Cross reference: See also ch. Pod 1, Wis. adm code.

448.62 Applicability. This subchapter does not require a license for any of the following:

(1) A person lawfully practicing within the scope of a license, permit, registration or certification granted by this state or the federal government.

(2) A person assisting a podiatrist in practice under the direct, on-premises supervision of the podiatrist.

(3) A podiatry student engaged in activities required for his or her education or training.

(4) A podiatrist who is licensed to practice podiatry in another state or country and is providing a consultation or demonstration with a podiatrist who is licensed under this subchapter.

(5) A person performing the gratuitous domestic administration of family remedies.

(6) A person furnishing medical assistance or first aid at the scene of an emergency.

History: 1997 a. 175.

448.63 Licensure of podiatrists. (1) Subject to sub.(4), the affiliated credentialing board shall grant a license as a podiatrist to a person who does all of the following:

(a) Submits an application for the license to the department on a form provided by the department.

(b) Pays the fee specified in s. 440.05 (1).

(c) Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory to the affiliated credentialing board that the applicant does not have an arrest or conviction record.

(d) Submits evidence satisfactory to the affiliated credentialing board of all of the following:

1. That the applicant is a graduate of a school of podiatric medicine and surgery approved by the affiliated credentialing board and possesses a diploma from such school conferring the degree of doctor of podiatric medicine, or equivalent degree as determined by the affiliated credentialing board, unless the affiliated credentialing board waives these requirements under sub.(2).

2. That the applicant has completed 12 months of postgraduate training in a program approved by the affiliated credentialing board.

(e) Passes an examination under s. 448.64.

(2) The affiliated credentialing board may waive the requirement under sub.(1) (d) 1. for an applicant who establishes, to the satisfaction of the affiliated credentialing board, all of the following:

(a) That he or she is a graduate of a podiatry school.

(b) That he or she is licensed as a podiatrist by another licensing jurisdiction in the United States.

(c) That the jurisdiction in which he or she is licensed required the licensee to be a graduate of a school approved by the licensing jurisdiction or of a school that the licensing jurisdiction evaluated for education equivalency.

(d) That he or she has actively practiced podiatry, under the license issued by the other licensing jurisdiction in the United States, for at least 3 years immediately preceding the date of his or her application.

(3) The affiliated credentialing board may promulgate rules providing for various classes of temporary licenses to practice podiatry.

(4) The affiliated credentialing board may grant a limited license to an applicant for a license under sub.(1) if the affiliated credentialing board finds that the applicant has not demonstrated adequate education, training or performance on any past examination or in any past practice, and that, based upon considerations of public health and safety, the applicant does not qualify for full licensure under sub.(1).

History: 1997 a. 175.

Cross reference: See also ch. Pod 1, Wis. adm. code.

448.64 Examination. (1) The affiliated credentialing board shall conduct or arrange for examinations for podiatrist licensure at least semiannually and at times and places determined by the affiliated credentialing board.

(2) Except as provided in sub.(3), examinations shall consist of written or oral tests, or both, requiring an applicant to demonstrate minimum competency in subjects substantially related to the practice of podiatry.

(3) The affiliated credentialing board may not require an applicant to take an oral examination or an examination to test proficiency in the English language for the sole reason that the applicant was educated at a podiatry school that is not in the United States if the applicant establishes, to the satisfaction of the affiliated credentialing board, that he or she satisfies the requirements under s. 448.63 (2).

(4) The affiliated credentialing board may require an applicant who fails to appear for or to complete an examination under this section to reapply for licensure before being admitted to a subsequent examination.

(5) An applicant who fails to pass an examination under this section may request reexamination, and may be reexamined not more than twice at not less than 4-month intervals, and shall pay a reexamination fee for each reexamination. An applicant who fails to pass an examination on the 2nd such reexamination may not be admitted to further examination until the applicant reapplies for licensure and submits evidence that shows, to the satisfaction of the affiliated credentialing board, that he or she has completed additional education or received additional professional training.

History: 1997 a. 175.

Cross reference: See also ss. Pod 1.06, 1.07, and 1.11, Wis. adm. code.

448.65 Issuance of license; expiration and renewal; duplicate license. (1) The department shall issue a certificate of licensure to each person who is licensed under this subchapter.

(2) The renewal date for a license granted under this subchapter, other than a temporary license granted under rules promulgated under s. 448.63 (3), is specified under s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall be accompanied by all of the following:

(a) The renewal fee specified in s. 440.08 (2) (a).

(b) Proof of completion of continuing education requirements in s. 448.665.

(3) A licensee whose license is lost, stolen or destroyed may apply to the department for a duplicate license. Duplicate license applications shall be submitted to the department on a form provided by the department and shall be accompanied by the fee specified under s. 440.05 (7) and an affidavit setting out the circumstances of the loss, theft or destruction of the license. Upon receipt of an application under this subsection, the department shall issue a duplicate license bearing on its face the word "duplicate".

History: 1997 a. 175.

Cross reference: See also ch. Pod 4, Wis. adm. code.

448.655 Malpractice liability insurance. (1) A licensed podiatrist shall annually submit to the affiliated credentialing board evidence satisfactory to the affiliated credentialing board that the podiatrist satisfies one of the following:

(a) The podiatrist has in effect malpractice liability insurance coverage in the amount of at least \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(b) The podiatrist meets all of the following conditions:

1. The podiatrist's principal place of practice is not in this state.

2. The podiatrist will not be engaged in the practice of podiatry in this state for more than 240 hours during the following 12 months.

3. The podiatrist has in effect malpractice liability insurance coverage that covers services provided by the podiatrist to patients in this state and which is in one of the following amounts:

a. At least the minimum amount of malpractice liability insurance coverage that is required under the laws of the state in which the affiliated credentialing board determines that his or her principal place of practice is located.

b. If the podiatrist is not required under the laws of the state in which the affiliated credentialing board determines that his or her principal place of practice is located to have in effect a minimum amount of malpractice liability insurance coverage, at least the minimum amount of malpractice liability insurance coverage that the affiliated credentialing board determines is necessary to protect the public.

(2) For purposes of sub.(1), a podiatrist's principal place of practice is not in this state if the affiliated credentialing board determines that, during the following 12 months, any of the following applies:

(a) More than 50% of the podiatrist's practice will be performed outside this state.

(b) More than 50% of the income from the podiatrist's practice will be derived from outside this state.

(c) More than 50% of the podiatrist's patients will be treated by the podiatrist outside this state.

(3) The affiliated credentialing board may suspend, revoke or refuse to issue or renew the license of a podiatrist who fails to procure or to submit proof of the malpractice liability insurance coverage required under sub.(1).

History: 1985 a. 340; 1989 a. 152; 1997 a. 175 ss. 51 to 56; Stats. 1997 s. 448.655

448.66 Malpractice. A person who practices podiatry without having a license under this subchapter may be liable for malpractice, and his or her ignorance of a duty ordinarily performed by a licensed podiatrist shall not limit his or her liability for an injury arising from his or her practice of podiatry.

History: 1997 a. 175.

448.665 Continuing education. The affiliated credentialing board shall promulgate rules establishing requirements and procedures for licensees to complete continuing education programs or courses of study in order to qualify for renewal of a license granted under this subchapter. The rules shall require a licensee to complete at least 30 hours of continuing education programs or courses of study within each 2-year period immediately preceding the renewal date specified under s. 440.08 (2) (a). The affiliated credentialing board may waive all or part of these requirements for the completion of continuing education programs or courses of study if the affiliated credentialing board determines that prolonged illness, disability or other exceptional circumstances have prevented a licensee from completing the requirements.

History: 1997 a. 175.

Cross reference: See also ch. Pod 3, Wis. adm. code.

448.67 Practice requirements. (1) **FEE SPLITTING.** No licensee may give or receive, directly or indirectly, to or from any other person any fee, commission, rebate or other form of compensation or anything of value for sending, referring or otherwise inducing a person to communicate with a licensee in a professional capacity, or for any professional services not actually rendered personally by the licensee or at the licensee's direction.

(2) **SEPARATE BILLING REQUIRED.** Except as provided in sub.(4), a licensee who renders any podiatric service or assistance whatever, or gives any podiatric advice or any similar advice or assistance whatever, to any patient, podiatrist, physician, partnership or corporation, or to any other institution or organization of any kind, including a hospital, for which a charge is made to a patient, shall, except as authorized by Title 18 or Title 19 of the federal Social Security Act, render an individual statement or account of the charge directly to the patient, distinct and separate from any statement or account by any other podiatrist, physician or other person.

(3) **BILLING FOR TESTS PERFORMED BY THE STATE LABORATORY OF HYGIENE.** A licensee who charges a patient, other person or 3rd-party payer for services performed by the state laboratory of hygiene shall identify the actual amount charged by the state laboratory of hygiene and shall restrict charges for those services to that amount.

(4) **BILLING BY PROFESSIONAL PARTNERSHIPS AND CORPORATIONS.** If 2 or more podiatrists have entered into a bona fide partnership or formed a service corporation for the practice of podiatry, the partnership or corporation may not render a single bill for podiatry services provided in the name of the partnership or corporation unless each individual licensed, registered or certified under this chapter or ch. 446, 449, 450, 455, 457 or 459, who provided services is individually identified on the bill as having rendered those services.

History: 1997 a. 175.

448.675 Disciplinary proceedings and actions. (1) **INVESTIGATION; HEARING; ACTION.** (a) The affiliated credentialing board shall investigate allegations of unprofessional conduct and negligence in treatment by a licensee. Information contained in reports filed with the affiliated credentialing board under s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the affiliated credentialing board. Information contained in a report filed with the affiliated credentialing board under s. 50.36 (3) (c) may, within the discretion of the affiliated credentialing board, be used as the basis of an investigation of a person named in the report. The affiliated credentialing board may require a licensee to undergo and may consider the results of a physical, mental or professional competency examination if the affiliated credentialing board believes that the results of the examination may be useful to the affiliated credentialing board in conducting its investigation.

(b) After an investigation, if the affiliated credentialing board finds that there is probable cause to believe that the person is guilty of unprofessional conduct or negligence in treatment, the affiliated credentialing board shall hold a hearing on such conduct. The affiliated credentialing board may require a licensee to undergo and may consider the results of a physical, mental or professional competency examination if the affiliated credentialing board believes that the results of the examination may be useful to the affiliated credentialing board in conducting its hearing. A finding by a court that a podiatrist has acted negligently in treating a patient is conclusive evidence that the podiatrist is guilty of negligence in treatment. A certified copy of the order of a court is presumptive evidence that the finding of negligence in treatment was made. The affiliated credentialing board shall render a decision within 90 days after the date on which the hearing is held or, if subsequent proceedings are conducted under s. 227.46 (2), within 90 days after the date on which those proceedings are completed.

(c) After a disciplinary hearing, the affiliated credentialing board may, when it determines that a court has found that a person has been negligent in treating a patient or when it finds a person guilty of unprofessional conduct or negligence in treatment, do one or more of the following: warn or reprimand that person, or limit, suspend or revoke a license granted by the affiliated credentialing board to that person. The affiliated credentialing board may condition the removal of limitations on a license, or the restoration of a suspended or revoked license, upon obtaining minimum results specified by the affiliated credentialing board on a physical, mental or professional competency examination if the affiliated credentialing board believes that obtaining the minimum results is related to correcting one or more of the bases upon which the limitation, suspension or revocation was imposed.

(d) A person whose license is limited shall be permitted to continue practice if the person agrees to do all of the following:

1. Refrain from engaging in unprofessional conduct.
2. Appear before the affiliated credentialing board or its officers or agents at such times and places designated by the affiliated credentialing board.
3. Fully disclose to the affiliated credentialing board or its officers or agents the nature of the person's practice and conduct.
4. Fully comply with the limits placed on his or her practice and conduct by the affiliated credentialing board.
5. Obtain additional training, education or supervision required by the affiliated credentialing board.
6. Cooperate with the affiliated credentialing board.

(e) Unless a suspended license is revoked during the period of suspension, upon expiration of the period of suspension the affiliated credentialing board shall reinstate the person's license, except that the affiliated credentialing board may, as a condition precedent to the reinstatement of the license, require the person to pass the examinations required for the original grant of the license.

(f) The affiliated credentialing board shall comply with rules of procedure for the investigation, hearing and action promulgated by the department under s. 440.03 (1).

(g) Nothing in this subsection prohibits the affiliated credentialing board, in its discretion, from investigating and conducting disciplinary proceedings on allegations of unprofessional conduct by a licensee when the allegations of unprofessional conduct may also constitute allegations of negligence in treatment.

(2) SUSPENSION PENDING HEARING. The affiliated credentialing board may summarily suspend a license granted by the affiliated credentialing board for a period not to exceed 30 days pending hearing if the affiliated credentialing board has in its possession evidence establishing probable cause to believe that the licensee has violated the provisions of this subchapter and that it is necessary to suspend the license immediately to protect the public health, safety or welfare. The licensee shall be granted an opportunity to be heard during the determination of whether or not probable cause exists. The affiliated credentialing board may designate any of its officers to exercise the authority granted by this subsection to suspend summarily a license, for a period not exceeding 72 hours. If a license has been summarily suspended by the affiliated credentialing board or any of its officers, the affiliated credentialing board may, while the hearing is in progress, extend the initial period of suspension for not more than an additional 30 days. If the licensee has caused a delay in the hearing process, the affiliated credentialing board may

subsequently suspend the license from the time the hearing is commenced until a final decision is issued or may delegate such authority to the hearing examiner.

(3) VOLUNTARY SURRENDER. A licensee may voluntarily surrender his or her license to the secretary of the affiliated credentialing board, but the secretary may refuse to accept the surrender if the affiliated credentialing board has received an allegation of unprofessional conduct against the licensee. The affiliated credentialing board may negotiate stipulations in consideration for accepting the surrender of a license.

(4) RESTORATION OF LICENSE, CERTIFICATE OR LIMITED PERMIT. The affiliated credentialing board may restore a license which has been voluntarily surrendered or revoked under this subchapter on such terms and conditions as it considers appropriate.

History: 1997 a. 175.

Cross reference: See also ch. Pod 2, Wis. adm code.

448.68 Hospital reports. Within 30 days after receipt of a report under s. 50.36 (3) (c), the affiliated credentialing board shall notify the licensee, in writing, of the substance of the report. The licensee and the licensee's authorized representative may examine the report and may place into the record a statement, of reasonable length, of the licensee's view of the correctness or relevance of any information in the report. The licensee may institute an action in circuit court to amend or expunge any part of the licensee's record related to the report.

(2) If the affiliated credentialing board determines that a report submitted under s. 50.36 (3) (c) is without merit or that the licensee has sufficiently improved his or her conduct, the affiliated credentialing board shall remove the report from the licensee's record. If no report about a licensee is filed under s. 50.36 (3) (c) for 2 consecutive years, the licensee may petition the affiliated credentialing board to remove any prior reports, which did not result in disciplinary action, from his or her record.

(3) Upon the request of a hospital, the affiliated credentialing board shall provide the hospital with all information relating to a licensee's loss, reduction or suspension of staff privileges from other hospitals and all information relating to the licensee's being found guilty of unprofessional conduct. In this subsection, "hospital" has the meaning specified under s. 50.33 (2).

History: 1997 a. 175.

448.685 Injunctive relief. If the affiliated credentialing board has reason to believe that a person is violating this subchapter or a rule promulgated under this subchapter, the affiliated credentialing board, the department, the attorney general or the district attorney of the proper county may investigate and may, in addition to any other remedies, bring an action in the name and on behalf of this state to enjoin the person from the violation.

History: 1997 a. 175.

448.69 Penalties; appeal. (1) PENALTIES. (a) Except as provided in par.(b), a person who violates any provision of this subchapter or a rule promulgated under this subchapter may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(b) A person who violates s. 448.67 (3) may be fined not more than \$250.

(2) APPEAL. A person aggrieved by an action taken under this subchapter by the affiliated credentialing board, its officers or its agents may apply for judicial review as provided in ch. 227, and shall file notice of such appeal with the secretary of the affiliated credentialing board within 30 days. No court of this state may enter an ex parte stay of an action taken by the affiliated credentialing board under this subchapter.

History: 1997 a. 175.

448.695 Rules. The affiliated credentialing board shall promulgate rules defining the acts or attempted acts of commission or omission that constitute unprofessional conduct under s. 448.60 (5).

(2) The affiliated credentialing board may promulgate rules to carry out the purposes of this subchapter.

History: 1997 a. 175.

Cross reference: See also Pod, Wis. adm code.

CHAPTER 450 PHARMACY EXAMINING BOARD

- 450.01 Definitions.
450.10 Disciplinary proceedings; immunity; orders
450.11 Prescription drugs and prescription devices.

450.01 Definitions. In this chapter:

(7) "Dispense" means to deliver a prescribed drug or device to an ultimate user or research subject by or pursuant to the prescription order of a practitioner, including the compounding, packaging or labeling necessary to prepare the prescribed drug or device for delivery.

450.10 Disciplinary proceedings; immunity; orders.

(1) (a) In this subsection, "unprofessional conduct" includes, but is not limited to:

1. Making any materially false statement or giving any materially false information in connection with an application for a license or for renewal or reinstatement of a license.
2. Violating this chapter or, subject to s. 961.38 (4r), ch. 961 or any federal or state statute or rule which substantially relates to the practice of the licensee.
3. Practicing pharmacy while the person's ability to practice is impaired by alcohol or other drugs or physical or mental disability or disease.
4. Engaging in false, misleading or deceptive advertising.
5. Making a substantial misrepresentation in the course of practice which is relied upon by another person.
6. Engaging in conduct in the practice of the licensee which evidences a lack of knowledge or ability to apply professional principles or skills.
7. Obtaining or attempting to obtain compensation by fraud or deceit.
8. Violating any order of the board. (b) Subject to subch. II of ch. 111 and the rules adopted under s. 440.03 (1), the board may reprimand the licensee or deny, revoke, suspend or limit the license or any combination thereof of any person licensed under this chapter who has:

1. Engaged in unprofessional conduct.
2. Been adjudicated mentally incompetent by a court.
3. Been found guilty of an offense the circumstances of which substantially relate to the practice of the licensee.

(2) In addition to or in lieu of a reprimand or denial, limitation, suspension or revocation of a license under sub. (1), the board may, for the violations enumerated under sub. (1), assess a forfeiture of not more than \$1,000 for each separate offense. Each day of violation constitutes a separate offense.

(3) (a) In this subsection, "health care professional" means any of the following:

1. A pharmacist licensed under this chapter.
2. A nurse licensed under ch. 441.
3. A chiropractor licensed under ch. 446.
4. A dentist licensed under ch. 447.
5. A physician, physician assistant, podiatrist, physical therapist, occupational therapist or occupational therapy assistant licensed under ch. 448.

NOTE: Subd. 5. is amended eff. 4-1-04 by 2001 Wis. Act 70 to read: 5. A physician, physician assistant, podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448.

5m. A dietitian certified under subch. V of ch. 448.

5q. An athletic trainer licensed under subch. VI of ch. 448.

6. An optometrist licensed under ch. 449.

7. An acupuncturist certified under ch. 451.

8. A veterinarian licensed under ch. 453.

9. A psychologist licensed under ch. 455.

10. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

NOTE: Subd. 10. is shown as amended eff. 11-1-02 by 2001 Wis. Act 80. Prior to 11-1-02 it reads: 10. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

11. A speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

(b) Any health care professional who in good faith provides another health care professional with information concerning a violation of this chapter or ch. 961 by any person shall be immune from any civil or criminal liability that results from any act or omission in providing such information. In any administrative or court proceeding, the good faith of the health care professional providing such information shall be presumed.

(4) (a) The secretary may, in case of the need for emergency action, issue general and special orders necessary to prevent or correct actions by any pharmacist under this section that would be cause for suspension or revocation of a license.

(b) Special orders may direct a pharmacist to cease and desist from engaging in particular activities.

History: 1985 a. 146; 1987 a. 264,399; 1989 a. 31,316; 1991 a. 39, 160; 1993 a. 222,443; 1995 a. 27 s. 9145 (1); 1995 a. 448; 1997 a. 27, 67, 75, 175; 1999 a. 9, 32, 180; 2001 a. 70, 80.

Cross Reference: See also ch. Phar 10, Wis. adm. code.

450.11 Prescription drugs and prescription devices.

(1) **DISPENSING.** No person may dispense any prescribed drug or device except upon the prescription order of a practitioner. All prescription orders shall specify the date of issue, the name and address of the patient, the name and address of the practitioner, the name and quantity of the drug product or device prescribed, directions for the use of the drug product or device and, if the order is written by the practitioner, the signature of the practitioner. Any oral prescription order shall be immediately reduced to writing by the pharmacist and filed according to sub. (2).

(1m) **ELECTRONIC TRANSMISSION.** Except as provided in s. 453.068 (1) (c) 4., a practitioner may transmit a prescription order electronically only if the patient approves the transmission and the prescription order is transmitted to a pharmacy designated by the patient.

(2) **PRESCRIPTION ORDER FILE.** Every prescription order shall be filed in a suitable book or file and preserved for at least 5 years. Subject to s. 961.38 (2), prescription orders transmitted electronically may be filed a

CHAPTER 655 HEALTH CARE LIABILITY AND PATIENTS COMPENSATION

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- 655.68 Mediation fund.

Cross-reference: See definitions in ss. 600.03 and 628.02.
Cross reference: See also ch. Ins 17, Wis. adm. code.

SUBCHAPTER I GENERAL PROVISIONS

655.001 Definitions. In this chapter: **(1)** "Board of governors" means the board created under s. 619.04 (3).

(2) "Claimant" means the person filing a request for mediation under s. 655.44 or 655.445.

(4) "Department" means the department of health and family services.

(6) "Fiscal year" means the period beginning on July 1 and ending on the following June 30.

(7) "Fund" means the patients compensation fund under s. 655.27.

(7t) "Health care practitioner" means a health care professional, as defined in s. 180.1901 (1m), who is an employee of a health care provider described in s. 655.002 (1) (d), (e), or **(f)** and who has the authority to provide health care services that are not in collaboration with a physician under s. 441.15 (2) (b) or under the direction and supervision of a physician or nurse anesthetist.

(8) "Health care provider" means a person to whom this chapter applies under s. 655.002 (1) or a person who elects to be subject to this chapter under s. 655.002 (2).

(9) "Nurse anesthetist" means a nurse licensed under ch. 441 or in a party state, as defined in s. 441.50 (2) (j), who is certified as a nurse anesthetist by the American association of nurse anesthetists.

(10) "Patient" means an individual who received or should have received health care services from a health care provider or from an employee of a health care provider acting within the scope of his or her employment.

(10m) "Physician" means a medical or osteopathic physician licensed under ch. 448.

(11) "Principal place of practice" means any of the following:

(a) The state in which a health care provider furnishes health care services to more than 50% of his or her patients in a fiscal year.

(b) The state in which a health care provider derives more than 50% of his or her income in a fiscal year from the practice of his or her profession.

(2) "Representative" means the personal representative, spouse, parent, guardian, attorney or other legal agent of a patient.

(13) "Respondent" means the person alleged to have been negligent in a request for mediation filed under s. 655.44 or 655.445.

History: 1975 c. 37, 79; 1977 c. 26 s. 75; 1977 c. 131; 1977 c. 203 s. 106; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1979 c. 124, 185, 355; 1983 a. 189 s. 329 (5); 1985 a. 340; 1987 a. 27, 182, 264, 403; 1989 a. 187; 1991 a. 214; 1993 a. 473; 1995 a. 27 s. 9126 (19); 1999 a. 22; 2001 a. 52.

Medical malpractice panels: The Wisconsin approach. Kravat **61 MLR** 55. A summary of the new statutes governing medical malpractice. Saichek. WBB Oct. 1986.

Recent developments in Wisconsin medical malpractice law. 1974 WLR 891.

Testing the constitutionality of medical malpractice legislation: The Wisconsin medical malpractice act of 1975. 1977 WLR 838.

See also: State ex rel. Strykowski v. Wilkie, 81 Wis. 2d 491.

655.002 Applicability. (1) MANDATORY PARTICIPATION. Except as provided in s. 655.003, this chapter applies to all of the following:

(a) A physician or a nurse anesthetist for whom this state is a principal place of practice and who practices his or her profession in this state more than 240 hours in a fiscal year.

(b) A physician or a nurse anesthetist for whom Michigan is a principal place of practice, if all of the following apply:

1. The physician or nurse anesthetist is a resident of this state.

2. The physician or nurse anesthetist practices his or her profession in this state or in Michigan or a combination of both more than 240 hours in a fiscal year.

3. The physician or nurse anesthetist performs more procedures in a Michigan hospital than in any other hospital. In this subdivision, "Michigan hospital" means a hospital located in Michigan that is an affiliate of a corporation organized under the laws of this state that maintains its principal office and a hospital in this state.

(c) A physician or nurse anesthetist who is exempt under s. 655.003 (1) or (3), but who practices his or her profession outside the scope of the exemption and who fulfills the requirements under par.(a) in relation to that practice outside the scope of the exemption. For a physician or a nurse anesthetist who is subject to this chapter under this paragraph, this chapter applies only to claims arising out of practice that is outside the scope of the exemption under s. 655.003 (1) or (3).

(d) A partnership comprised of physicians or nurse anesthetists and organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists.

(e) A corporation organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists.

(f) A cooperative sickness care association organized under ss. 185.981 to 185.985 that operates a nonprofit sickness care plan in this state and that directly provides services through salaried employees in its own facility.

(g) An ambulatory surgery center that operates in this state.

(h) A hospital, as defined in s. 50.33 (2) (a) and (c), that operates in this state.

(i) An entity operated in this state that is an affiliate of a hospital and that provides diagnosis or treatment of, or care for, patients of the hospital.

(j) A nursing home, as defined in s. 50.01 (3), whose operations are combined as a single entity with a hospital described in par.(h), whether or not the nursing home operations are physically separate from the hospital operations.

(2) OPTIONAL PARTICIPATION. All of the following may elect, in the manner designated by the commissioner by rule under s. 655.004, to be subject to this chapter:

(a) A physician or nurse anesthetist for whom this state is a principal place of practice but who practices his or her profession fewer than 241 hours in a fiscal year, for a fiscal year, or a portion of a fiscal year, during which he or she practices his or her profession.

(b) Except as provided in sub.(1) (b), a physician or nurse anesthetist for whom this state is not a principal place of practice, for a fiscal year, or a portion of a fiscal year, during which he or she practices his or her profession in this state. For a health care provider who elects to be subject to this chapter under this paragraph, this chapter applies only to claims arising out of practice that is in this state and that is outside the scope of an exemption under s. 655.003(1) or (3).

History: 1987 a. 27; 1991 a. 214.

In an action governed by ch. 655, no claim may be brought by adult children for loss of society and companionship of an adult parent; s. 895.04 is inapplicable to ch. 655 actions. *Dziazos v. Zimeski*, 177 Wis. 2d 59, 501 N.W.2d 828 (Ct. App. 1993).

In an action governed by ch. 655, no recovery may be had by a parent for the loss of society and companionship of an adult child. *Wells Estate v. Mt Sinai Medical Center*, 183 Wis. 2d 666, 515 N.W.2d 705 (1994).

Chapter 655 does not control all actions against HMOs. It applies only to negligent medical acts or decisions made in the course of rendering medical care. A bad faith tort action may be prosecuted against an HMO that has denied a request for coverage without a legal basis. *McEvoy v. Group Health Cooperative*, 213 Wis. 2d 507, 570 N.W.2d 397 (1997).

655.003 Exemptions for public employees and facilities and volunteers. Except as provided in s. 655.002 (1) (c), this chapter does not apply to a health care provider that is any of the following:

(1) A physician or a nurse anesthetist who is a state, county or municipal employee, or federal employee or contractor covered under the federal tort claims act, as amended, and who is acting within the scope of his or her employment or contractual duties.

(2) A facility that is exempt under s. 50.39 (3) or operated by any governmental agency.

(3) A physician or a nurse anesthetist who provides professional services under the conditions described in s. 146.89, with respect to those professional services provided by the physician or nurse anesthetist for which he or she is covered by s. 165.25 and considered an agent of the department, as provided in s. 165.25 (6) (b).

History: 1989a. 187,206; 1991 a. 214.

655.004 Rule-making authority. The director of state courts, department and commissioner may promulgate such rules under ch. 227 as are necessary to enable them to perform their responsibilities under this chapter.

History: 1975 c. 37; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1987a. 27; Stats. 1987 s. 655.004; 1989a. 187 s. 28.

Cross reference: See also ch. DC 1, Wis. adm. code.

655.005 Health care provider employees. (1) Any person listed in s. 655.007 having a claim or a derivative claim against a health care provider or an employee of the health care provider, for damages for bodily injury or death due to acts or omissions of the employee of the health care provider acting within the scope of his or her employment and providing health care services, is subject to this chapter.

(2) The fund shall provide coverage, under s. 655.27, for claims against the health care provider or the employee of the health care provider due to the acts or omissions of the employee acting within the scope of his or her employment and providing health care services. This subsection does not apply to any of the following:

(a) An employee of a health care provider if the employee is a physician or a nurse anesthetist or is a health care practitioner who is providing health care services that are not in collaboration with a physician under s. 441.15 (2) (b) or under the direction and supervision of a physician or nurse anesthetist.

(b) A service corporation organized under s. 180.1903 by health care professionals, as defined under s. 180.1901 (1m), if the board

of governors determines that it is not the primary purpose of the service corporation to provide the medical services of physicians or nurse anesthetists. The board of governors may not determine under this paragraph that it is not the primary purpose of a service corporation to provide the medical services of physicians or nurse anesthetists unless more than 50% of the shareholders of the service corporation are neither physicians nor nurse anesthetists.

(2t) Subsection (2) does not affect the liability of a health care provider described in s. 655.002 (1) (d), (e) or (f) for the acts of its employees.

History: 1985 a. 340; 1987 a. 27; Stats. 1987 s. 655.005; 1989a. 187; 1991 a. 214; 1993a. 473; 1995 a. 167; 2001 a. 52.

655.006 Remedy. (1) (a) On and after July 24, 1975, every patient, every patient's representative and every health care provider shall be conclusively presumed to have accepted to be bound by this chapter.

(b) Except as otherwise specifically provided in this chapter, this subsection also applies to minors.

(2) This chapter does not apply to injuries or death occurring, or services rendered, prior to July 24, 1975.

History: 1975 c. 37; 1987 a. 27; Stats. 1987 s. 655.006.

655.007 Patients' claims. On and after July 24, 1975, any patient or the patient's representative having a claim or any spouse, parent, minor sibling or child of the patient having a derivative claim for injury or death on account of malpractice is subject to this chapter.

History: 1975 c. 37, 199; 1983 a. 253; 1997 a. 89.

This chapter was inapplicable to a 3rd-party claim based on contract in which no bodily injury was alleged. *Northwest General Hospital v. Yee*, 115 Wis. 2d 59, 339 N.W.2d 583 (1983).

In this section "child" refers to a minor child. An adult child cannot assert a claim based on medical malpractice committed against the adult child's parent. *Ziulkowski v. Nierengarten*, 210 Wis. 2d 98, 565 N.W.2d 164 (Ct. App. 1997).

Section 893.55 (4) (f) makes the limits on damages applicable to medical malpractice death cases, but does not incorporate classification of wrongful death claimants entitled to bring such actions, which is controlled by this section. As such, adult children do not have standing to bring such an action. The exclusion of adult children does not violate equal protection. *Czapinski v. St. Francis Hospital, Inc.* 2000 WI 80, 236 Wis. 2d 316, 613 N.W.2d 120

655.009 Actions against health care providers. An action to recover damages on account of malpractice shall comply with the following:

(1) **COMPLAINT.** The complaint in such action shall not specify the amount of money to which the plaintiff supposes to be entitled.

(2) **MEDICAL EXPENSE PAYMENTS.** The court or jury, whichever is applicable, shall determine the amounts of medical expense payments previously incurred and for future medical expense payments.

(3) **VENUE.** Venue in a court action under this chapter is in the county where the claimant resides if the claimant is a resident of this state, or in a county specified in s. 801.50 (2) (a) or (c) if the claimant is not a resident of this state.

History: 1975 c. 37, 198, 199; 1983 a. 253; 1985 a. 340.

Discretionary changes of venue under s. 801.52 are applicable to actions under ch. 655. *Hoffman v. Memorial Hospital of Iowa County*, 196 Wis. 2d 505, 538 N.W.2d 627 (Ct App. 1995).

655.01 Forms. The director of state courts shall prepare and cause to be printed, and upon request furnish free of charge, such forms and materials as the director deems necessary to facilitate or promote the efficient administration of this chapter.

History: 1975 c. 37, 199; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1989a. 187 s. 28.

655.013 Attorney fees. (1) With respect to any act of malpractice after July 24, 1975, for which a contingency fee arrangement has been entered into before June 14, 1986, the compensation determined on a contingency basis and payable to all attorneys acting for one or more plaintiffs or claimants is subject to the following unless a new contingency fee arrangement is entered into that complies with subs.(1m) and (1t):

(a) The determination shall not reflect amounts previously paid for medical expenses by the health care provider or the provider's insurer.

(b) The determination shall not reflect payments for future medical expense in excess of \$25,000.

(1m) Except as provided in sub.(1t), with respect to any act of malpractice for which a contingency fee arrangement is entered

SUBCHAPTER III INSURANCE PROVISIONS

into on and after June 14, 1986, in addition to compensation for the reasonable costs of prosecution of the claim, the compensation determined on a contingency basis and payable to all attorneys acting for one or more plaintiffs or claimants is subject to the following limitations:

(a) Except as provided in par.(b), 33 1/3% of the first \$1,000,000 recovered.

(b) Twenty-five percent of the first \$1,000,000 recovered if liability is stipulated within 180 days after the date of filing of the original complaint and not later than 60 days before the first day of trial.

(c) Twenty percent of any amount in excess of \$1,000,000 recovered.

(It) A court may approve attorney fees in excess of the limitations under sub.(Im) upon a showing of exceptional circumstances, including an appeal.

(2) An attorney shall offer to charge any client in a malpractice proceeding or action on a per diem or per hour basis. Any such agreement shall be made at the time of the employment of the attorney. An attorney's fee on a per diem or per hour basis is not subject to the limitations under sub.(1) or (Im).

History: 1975 c. 37, 199; 1985 a. 340.

655.015 Future medical expenses. If a settlement or judgment under this chapter resulting from an act or omission that occurred on or after May 25, 1995, provides for future medical expense payments in excess of \$100,000, that portion of future medical expense payments in excess of an amount equal to \$100,000 plus an amount sufficient to pay the costs of collection attributable to the future medical expense payments, including attorney fees reduced to present value, shall be paid into the fund. The commissioner shall develop by rule a system for managing and disbursing those moneys through payments for these expenses, which shall include a provision for the creation of a separate accounting for each claimant's payments and for crediting each claimant's account with a proportionate share of any interest earned by the fund, based on that account's proportionate share of the fund. The commissioner shall promulgate a rule specifying the criteria that shall be used to determine the medical expenses related to the settlement or judgment, taking into consideration developments in the provision of health care. The payments shall be made under the system until either the account is exhausted or the patient dies.

History: 1975 c. 37; 1977 c. 29; 1979 c. 34,154; 1983 a. 158; 1985 a. 340; 1991 a. 214; 1995 a. 10.

655.016 Claim by minor sibling for loss of society and companionship. Subject to s. 655.017, a sibling of a person who dies as a result of malpractice has a cause of action for damages for loss of society and companionship if the sibling was a minor at the time of the deceased sibling's death. This section does not affect any other claim available under this chapter.

History: 1997 a. 89.

655.017 Limitation on noneconomic damages. The amount of noneconomic damages recoverable by a claimant or plaintiff under this chapter for acts or omissions of a health care provider if the act or omission occurs on or after May 25, 1995, and for acts or omissions of an employee of a health care provider, acting within the scope of his or her employment and providing health care services, for acts or omissions occurring on or after May 25, 1995, is subject to the limits under s. 893.55 (4) (d) and (f).

History: 1985 a. 340 1995 a. 10.

The statutory cap on the recovery of noneconomic damages in medical malpractice cases is constitutional. *Guzman v. St. Francis Hospital, Inc.* 2001 WI App 21, 240 Wis. 2d 559, 623 N.W.2d 176.

Tort Reform: It's Not About Victims. . . It's About Lawyers. *Scoptur. Wis. Law. June 1995.*

655.019 Information needed to set fees. The department shall provide the director of state courts, the commissioner and the board of governors with information on hospital bed capacity and occupancy rates as needed to set fees under s. 655.27 (3) or 655.61.

History: 1985 a. 340; 1989 a. 187 s. 28; 1991 a. 214.

655.23 Limitations of liability; proof of financial responsibility. (3)

(a) Except as provided in par.(d), every health care provider either shall insure and keep insured the health care provider's liability by a policy of health care liability insurance issued by an insurer authorized to do business in this state or shall qualify as a self-insurer. Qualification as a self-insurer is subject to conditions established by the commissioner and is valid only when approved by the commissioner. The commissioner may establish conditions that permit a self-insurer to self-insure for claims that are against employees who are health care practitioners and that are not covered by the fund.

(b) Each insurance company issuing health care liability insurance that meets the requirements of sub.(4) to any health care provider shall, at the times prescribed by the commissioner, file with the commissioner in a form prescribed by the commissioner a certificate of insurance on behalf of the health care provider upon original issuance and each renewal.

(c) Each self-insured health care provider furnishing coverage that meets the requirements of sub.(4) shall, at the times and in the form prescribed by the commissioner, file with the commissioner a certificate of self-insurance and a separate certificate of insurance for each additional health care provider covered by the self-insured plan.

(d) If a cash or surety bond furnished by a health care provider for the purpose of insuring and keeping insured the health care provider's liability was approved by the commissioner before April 25, 1990, par.(a) does not apply to the health care provider while the cash or surety bond remains in effect. A cash or surety bond remains in effect unless the commissioner, at the request of the health care provider or the surety, approves its cancellation.

(4) (a) A cash or surety bond under sub.(3) (d) shall be in amounts of at least \$200,000 for each occurrence and \$600,000 for all occurrences in any one policy year for occurrences before July 1, 1987, \$300,000 for each occurrence and \$900,000 for all occurrences in any one policy year for occurrences on or after July 1, 1987, and before July 1, 1988, and \$400,000 for each occurrence and \$1,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1988.

(b) 1. Except as provided in par.(c), before July 1, 1997, health care liability insurance may have provided either occurrence or claims-made coverage. The limits of liability shall have been as follows:

a. For occurrence coverage, at least \$200,000 for each occurrence and \$600,000 for all occurrences in any one policy year for occurrences before July 1, 1987, \$300,000 for each occurrence and \$900,000 for all occurrences in any one policy year for occurrences on or after July 1, 1987, and before July 1, 1988, and \$400,000 for each occurrence and \$1,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1988, and before July 1, 1997.

b. For claims-made coverage, at least \$200,000 for each claim arising from an occurrence before July 1, 1987, regardless of when the claim is made, and \$600,000 for all claims in any one reporting year for claims made before July 1, 1987, \$300,000 for each claim arising from an occurrence on or after July 1, 1987, and before July 1, 1988, regardless of when the claim is made, and \$900,000 for all claims in any one reporting year for claims made on or after July 1, 1987, and before July 1, 1988, and \$400,000 for each claim arising from an occurrence on or after July 1, 1988, and before July 1, 1997, regardless of when the claim is made, and \$1,000,000 for all claims in any one reporting year for claims made on or after July 1, 1988, and before July 1, 1997.

2. Except as provided in par.(c), on and after July 1, 1997, health care liability insurance may provide either occurrence or claims-made coverage. The limits of liability shall be as follows:

a. For occurrence coverage, at least \$1,000,000 for each occurrence and \$3,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1997.

b. For claims-made coverage, at least \$1,000,000 for each claim arising from an occurrence on or after July 1, 1997, and \$3,000,000 for all claims in any one reporting year for claims made on or after July 1, 1997.

(c) 1. Except as provided in subd.2., self-insurance shall be in amounts of at least \$200,000 for each occurrence and \$600,000 for all occurrences in any one policy year for occurrences before July 1, 1987, \$300,000 for each occurrence and \$900,000 for all occurrences in any one policy year for occurrences on or after July 1, 1987, and before July 1, 1988, \$400,000 for each occurrence and \$1,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1988, and before July 1, 1997, and \$1,000,000 for each occurrence and \$3,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1997.

2. Notwithstanding subd.1., in the discretion of a self-insured health care provider, self-insurance may be in an amount that is less than \$1,000,000 but not less than \$600,000 for each occurrence on or after July 1, 1997, and before July 1, 1999, and less than \$1,000,000 but not less than \$800,000 for each occurrence on or after July 1, 1999, and before July 1, 2001.

(d) The commissioner may promulgate such rules as the commissioner considers necessary for the application of the liability limits under par.(b) to reporting years following termination of claims-made coverage, including rules that provide for the use of actuarial equivalents.

(5) While health care liability insurance, self-insurance or a cash or surety bond under sub.(3) (d) remains in force, the health care provider, the health care provider's estate and those conducting the health care provider's business, including the health care provider's health care liability insurance carrier, are liable for malpractice for no more than the limits expressed in sub.(4) or the maximum liability limit for which the health care provider is insured, whichever is higher, if the health care provider has met the requirements of this chapter.

(5m) The limits set forth in sub.(4) shall apply to any joint liability of a physician or nurse anesthetist and his or her corporation or partnership under s. 655.002 (1) (d) or (e).

(6) Any person who violates this section or s. 655.27 (3) (a) is subject to s. 601.64. For purposes of s. 601.64 (3) (c), each week of delay in compliance with this section or s. 655.27 (3) (a) constitutes a new violation.

(7) Each health care provider shall comply with this section and with s. 655.27 (3) (a) before exercising any rights or privileges conferred by his or her health care provider's license. The commissioner shall notify the board that issued the license of a health care provider that has not complied with this section or with s. 655.27 (3) (a). The board that issued the license may suspend, or refuse to issue or to renew the license of any health care provider violating this section or s. 655.27 (3) (a).

(8) No health care provider who retires or ceases operation after July 24, 1975, shall be eligible for the protection provided under this chapter unless proof of financial responsibility for all claims arising out of acts of malpractice occurring after July 24, 1975, is provided to the commissioner in the form prescribed by the commissioner.

History: 1975 c. 37, 79, 199; 1977 c. 131; 1983 a. 158; 1985 a. 340; 1989 a. 56 s. 259; 1989 a. 187 ss. 14 to 19, 29; 1989 a. 332; 1991 a. 214; 1993 a. 473; 1997 a. 11.

An insurer is liable under sub.(5) up to its policy limits. *Patients Fund v. St. Paul Ins. Co.* 116 Wis. 2d 337, 342 N.W.2d 693 (1984).

That a self-insurance plan could have or should have been approved is irrelevant. Under sub.(3) (a) the plan must actually be approved for a provider to be qualified as a self-insurer. *Patients Compensation Fund v. St. Mary's Hospital*, 209 Wis. 2d 17, 561 N.W.2d 797 (Ct. App. 1997).

Any liability of a person who is health care provider under ch. 655, while doing a provider's business, is limited to the amount of primary coverage mandated by sub.(4). Since the Fund is obligated to pay any amounts above this limit, the Fund does not have subrogation rights against the non-provider, or his or her insurer. *Patients Compensation Fund v. Lutheran Hospital*, 223 Wis. 2d 439, 588 N.W.2d 35 (1999).

This section is not preempted by federal law. *Ophthalmic Mutual Insurance Co. v. Muisser*, 143 F.3d 1062 (1998).

655.24 Insurance policy forms. (1) No insurer may enter into or issue any policy of health care liability insurance until its policy form has been submitted to and approved by the commissioner under s. 631.20 (1) (a). The filing of a policy form by any insurer with the commissioner for approval shall constitute, on the part of the insurer, a conclusive and unqualified acceptance of all provisions of this chapter, and an agreement by it to be bound hereby as to any policy issued by it to any health care provider.

(1a) Notwithstanding sub.(1), the issuance of a policy of health care liability insurance by an insurer to a health care provider

constitutes, on the part of the insurer, a conclusive and unqualified acceptance of all of the provisions of this chapter, and an agreement by it to be bound under the provisions of this chapter as to any policy issued by it to a health care provider.

(2) Every policy issued under this chapter shall be deemed conclusively to provide all of the following:

(a) That the insurer agrees to pay in full all of the following:

1. Attorney fees and other costs incurred in the settlement or defense of any claims.

2. Any settlement, arbitration award or judgment imposed against the insured under this chapter up to the limits expressed in s. 655.23 (4), or the maximum liability limit for which the health care provider is insured, whichever is greater.

3. Any portion or all of the interest, as determined by the board of governors, on an amount recovered against the insured under this chapter for which the insured is liable under s. 807.01 (4), 814.04 (4) or 815.05 (8).

(b) That any termination of the policy by cancellation or nonrenewal is not effective as to patients claiming against those covered by the policy unless the insured has been notified as provided in sub.(3) and s. 631.36, except that an insurer may cancel a health care provider's policy under s. 631.36 (2) if the health care provider is no longer licensed to practice medicine or nursing.

(3) A notice of cancellation or nonrenewal that is required under sub.(2) (b) issued to a health care provider who is a natural person must inform the health care provider that his or her license to practice medicine or nursing may be suspended or not renewed if the health care provider has no insurance or insufficient insurance. The insurer shall retain a copy of each notice issued under sub.(2) (b) for not less than 10 years from the date of mailing or delivery of the notice and shall furnish a copy to the commissioner upon request.

(4) The insurer shall, upon termination of a policy of health care liability insurance issued under this chapter by cancellation or nonrenewal, notify the commissioner of the termination.

History: 1975 c. 37; 1977 c. 131; 1985 a. 340; 1989 a. 187; 1991 a. 214; 1999 a. 9.

655.245 Insurance policy limitations. (1) No policy of health care liability insurance may permit a health care provider to reject any settlement agreed upon between the claimant and the insurer.

(2) A policy of health care liability insurance may permit the insurer to make payments for medical expenses prior to any determination of fault. Such payments are not an admission of fault. Such payments may be deducted from any judgment or arbitration award, but shall not be repaid regardless of the judgment or award. Nothing in this subsection shall restrict the insurer's right of comparative contribution or indemnity in accordance with the laws of this state.

History: 1975 c. 37.

655.25 Availability and effectiveness for health care liability insurance. No policy of health care liability insurance written under the provisions of s. 619.04 may be canceled or nonrenewed except for nonpayment of premiums unless the health care provider's license is revoked by the appropriate licensing board. A health care provider whose license is revoked shall be permitted to buy out in cases of a claims-made policy.

History: 1975 c. 37; 1995 a. 85.

655.26 Reports on claims paid. (1) In addition to any information required by the commissioner under s. 601.42, by the 15th day of each month, each insurer that writes health care liability insurance in this state and each self-insurer approved under s. 655.23 (3) (a) shall report the following information to the medical examining board and the board of governors on each claim paid during the previous month for damages arising out of the rendering of health care services:

(a) The name and address of the policyholder or self-insured entity and the name and address of any individual on whose behalf the claim was paid.

(b) The profession of the individual or the type of facility or entity on whose behalf the claim was paid.

(c) The health care provider's medical specialty, if the provider is a physician.

(d) A description of the injury, including its cause and severity.

(e) Whether the claim was paid as a result of a settlement, a patients compensation panel award or a court award.

(f) The amount of the payment.

(g) The number and amounts of any previous claims paid by the insurer or self-insurer for damages arising out of the rendering of health care services by the insured, the self-insurer or the employees of the insured or self-insurer. Only claims paid on or after July 20, 1985, are required to be reported under this paragraph.

(h) Any additional information requested by the medical examining board or the board of governors.

(2) By the 15th day of each month, the board of governors shall report the information specified in sub.(1) to the medical examining board for each claim paid by the fund during the previous month for damages arising out of the rendering of health care services by a health care provider or an employee of a health care provider.

(3) If more than one payment will be made on a claim, the first report filed under sub.(1) or (2) after the first payment is made on the claim shall include the total amount of the award or settlement and the projected schedule and amounts of payments.

(4) Any person who in good faith provides information to the medical examining board or the board of governors under this section is immune from civil liability for his or her acts or omissions in providing such information.

History: 1985 a. 29, 340; 1989 a. 187; 1991 a. 214.

SUBCHAPTER IV PATIENTS COMPENSATION FUND

655.27 Patients Compensation fund. **(1) FUND.** There is created a patients compensation fund for the purpose of paying that portion of a medical malpractice claim which is in excess of the limits expressed in s. 655.23 (4) or the maximum liability limit for which the health care provider is insured, whichever limit is greater, paying future medical expense payments under s. 655.015 and paying claims under sub.(1m). The fund shall provide occurrence coverage for claims against health care providers that have complied with this chapter, and against employees of those health care providers, and for reasonable and necessary expenses incurred in payment of claims and fund administrative expenses. The coverage provided by the fund shall begin July 1, 1975. The fund shall not be liable for damages for injury or death caused by an intentional crime, as defined under s. 939.12, committed by a health care provider or an employee of a health care provider, whether or not the criminal conduct is the basis for a medical malpractice claim.

(1m) PEER REVIEW ACTIVITIES. (a) The fund shall pay that portion of a claim described in par.(b) against a health care provider that exceeds the limit expressed in s. 655.23 (4) or the maximum liability limit for which the health care provider is insured, whichever limit is greater.

(b) A health care provider who engages in the activities described in s. 146.37 (1g) and (3) shall be liable for not more than the limits expressed under s. 655.23 (4) or the maximum liability limit for which the health care provider is insured, whichever limit is greater, if he or she is found to be liable under s. 146.37, and the fund shall pay the excess amount, unless the health care provider is found not to have acted in good faith during those activities and the failure to act in good faith is found by the trier of fact, by clear and convincing evidence, to be both malicious and intentional.

(2) FUND ADMINISTRATION AND OPERATION. Management Of the fund shall be vested with the board of governors. The commissioner shall either provide staff services necessary for the operation of the fund or, with the approval of the board of governors, contract for all or part of these services. Such a contract is subject to s. 16.765, but is otherwise exempt from subch. IV of ch. 16. The commissioner shall adopt rules governing the procedures for creating and implementing these contracts before entering into the contracts. At least annually, the contractor shall report to the commissioner and to the board of governors regarding all expenses incurred and subcontracting arrangements. If the board of governors approves, the contractor may hire legal counsel as needed to provide staff services. The cost of contracting

for staff services shall be funded from the appropriation under s. 20.145 (2) (u).

(3) FEES (a) Assessment. Each health care provider shall pay an annual assessment, which, subject to pars.(b) to (br), shall be based on the following considerations:

1. Past and prospective loss and expense experience in different types of practice.

2. The past and prospective loss and expense experience of the fund.

2m. The loss and expense experience of the individual health care provider which resulted in the payment of money, from the fund or other sources, for damages arising out of the rendering of medical care by the health care provider or an employee of the health care provider, except that an adjustment to a health care provider's fees may not be made under this subdivision prior to the receipt of the recommendation of the patients compensation fund peer review council under s. 655.275 (5) (a) and the expiration of the time period provided, under s. 655.275 (7), for the health care provider to comment or prior to the expiration of the time period under s. 655.275 (5) (a).

3. Risk factors for persons who are semiretired or part-time professionals.

4. For a health care provider described in s. 655.002 (1) (d), (e) or (f), risk factors and past and prospective loss and expense experience attributable to employees of that health care provider other than employees licensed as a physician or nurse anesthetist.

(am) Assessments for peer review council. The fund, a mandatory health care liability risk-sharing plan established under s. 619.04 and a private health care liability insurer shall be assessed, as appropriate, fees sufficient to cover the costs of the patients compensation fund peer review council, including costs of administration, for reviewing claims paid by the fund, plan and insurer, respectively, under s. 655.275 (5). The fees shall be set by the commissioner by rule, after approval by the board of governors, and shall be collected by the commissioner for deposit in the fund. The costs of the patients compensation fund peer review council shall be funded from the appropriation under s. 20.145 (2) (um).

(b) Fees established. 1. The commissioner, after approval by the board of governors, shall by rule set the fees under par.(a). The rule shall provide that fees may be paid annually or in semiannual or quarterly installments. In addition to the prorated portion of the annual fee, semiannual and quarterly installments shall include an amount sufficient to cover interest not earned and administrative costs incurred because the fees were not paid on an annual basis. This paragraph does not impose liability on the board of governors for payment of any part of a fund deficit.

2. With respect to fees paid by physicians, the rule shall provide for not more than 4 payment classifications, based upon the amount of surgery performed and the risk of diagnostic and therapeutic services provided or procedures performed.

2m. In addition to the fees and payment classifications described under subds. 1. and 2., the commissioner, after approval by the board of governors, may by rule establish a separate payment classification for physicians satisfying s. 655.002 (1) (b) and a separate fee for nurse anesthetists satisfying s. 655.002 (1) (b) which take into account the loss experience of health care providers for whom Michigan is a principal place of practice.

(bg) Fee increase. 1. Every rule under par.(b) shall provide for an automatic increase in a health care provider's fees, except as provided in subd. 2., if the loss and expense experience of the fund and other sources with respect to the health care provider or an employee of the health care provider exceeds either a number of claims paid threshold or a dollar volume of claims paid threshold, both as established in the rule. The rule shall specify applicable amounts of increase corresponding to the number of claims paid and the dollar volume of awards in excess of the respective thresholds.

2. The rule shall provide that the automatic increase does not apply if the board of governors determines that the performance of the patients compensation fund peer review council in making recommendations under s. 655.275 (5) (a) adequately addresses the consideration set forth in par.(a) 2m.

(br) Limit on fees. Every rule setting fees for a particular fiscal year under par.(b) shall ensure that the fees assessed do not exceed the greatest of the following:

1. The estimated total dollar amount of claims to be paid during that particular fiscal year.

2. The fees assessed for the fiscal year preceding that particular fiscal year, adjusted by the commissioner of insurance to reflect changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group, as determined by the U.S. department of labor.

3. Two hundred percent of the total dollar amount disbursed for claims during the calendar year preceding that particular fiscal year.

(c) **Collection and deposit of fees.** Fees under pars.(a) and (b) and future medical expense payments specified for the fund under s. 655.015 shall be collected by the commissioner for deposit into the fund in a manner prescribed by the commissioner by rule.

(d) **Rule not effective; fees.** If the rule establishing fees under par.(b) does not take effect prior to June 2 of any fiscal year, the commissioner may elect to collect fees as established for the previous fiscal year. If the commissioner so elects and the rule subsequently takes effect, the balance for the fiscal year shall be collected or refunded or the remaining semiannual or quarterly installment payments shall be adjusted except the commissioner may elect not to collect, refund or adjust for minimal amounts.

(e) **Podiatrist fees.** The commissioner, after approval by the board of governors, may by rule assess fees against podiatrists for the purpose of paying the fund's portion of medical malpractice claims and expenses resulting from claims against podiatrists based on occurrences before July 1, 1986.

(4) **FUND ACCOUNTING AND AUDIT.** (a) Moneys shall be withdrawn from the fund by the commissioner only upon vouchers approved and authorized by the board of governors.

(b) All books, records and audits of the fund shall be open to the general public for reasonable inspection, with the exception of confidential claims information.

(c) Persons authorized to receive deposits, withdraw, issue vouchers or otherwise disburse any fund moneys shall post a blanket fidelity bond in an amount reasonably sufficient to protect fund assets. The cost of such bond shall be paid from the fund.

(d) Annually after the close of a fiscal year, the board of governors shall furnish a financial report to the commissioner. The report shall be prepared in accordance with accepted accounting procedures and shall include the present value of all claims reserves, including those for incurred but not reported claims as determined by accepted actuarial principles, and such other information as may be required by the commissioner. The board of governors shall furnish an appropriate summary of this report to all fund participants.

(e) The board of governors shall submit a quarterly report to the state investment board and the department of administration projecting the future cash flow needs of the fund. The state investment board shall invest moneys held in the fund in investments with maturities and liquidity that are appropriate for the needs of the fund as reported by the board of governors in its quarterly reports under this paragraph. All income derived from such investments shall be credited to the fund.

(f) The board of governors shall submit a functional and progress report to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), on or before March 1 of each year.

(g) The board of governors may cede reinsurance to an insurer authorized to do business in this state under ch. 611, 613, 614 or 618 or pursue other loss funding management to preserve the solvency and integrity of the fund, subject to approval by the commissioner. The commissioner may prescribe controls over or other conditions on such use of reinsurance or other loss-funding management mechanisms.

(5) **CLAIMS PROCEDURES.** (a) 1. Any person may file a claim for damages arising out of the rendering of medical care or services or participation in peer review activities under s. 146.37 within this state against a health care provider or an employee of a health care provider. A person filing a claim may recover from the fund only if the health care provider or the employee of the health care provider has coverage under the fund, the fund is named as a party in the action, and the action against the fund is commenced within the same time limitation within which the action against the health care provider or employee of the health care provider must be commenced.

2. Any person may file an action for damages arising out of the rendering of medical care or services or participation in peer review activities under s. 146.37 outside this state against a health care provider or an employee of a health care provider. A person filing an action may recover from the fund only if the health care provider or the employee of the health care provider has coverage under the fund, the fund is named as a party in the action, and the action against the fund is commenced within the same time limitation within which the action against the health care provider or employee of the health care provider must be commenced. If the rules of procedure of the jurisdiction in which the action is brought do not permit naming the fund as a party, the person filing the action may recover from the fund only if the health care provider or the employee of the health care provider has coverage under the fund and the fund is notified of the action within 60 days of service of process on the health care provider or the employee of the health care provider. The board of governors may extend this time limit if it finds that enforcement of the time limit would be prejudicial to the purposes of the fund and would benefit neither insureds nor claimants.

3. If, after reviewing the facts upon which the claim or action is based, it appears reasonably probable that damages paid will exceed the limits in s. 655.23 (4), the fund may appear and actively defend itself when named as a party in an action against a health care provider, or an employee of a health care provider, that has coverage under the fund. In such action, the fund may retain counsel and pay out of the fund attorney fees and expenses including court costs incurred in defending the fund. The attorney or law firm retained to defend the fund shall not be retained or employed by the board of governors to perform legal services for the board of governors other than those directly connected with the fund. Any judgment affecting the fund may be appealed as provided by law. The fund may not be required to file any undertaking in any judicial action, proceeding or appeal.

(b) It shall be the responsibility of the insurer or self-insurer providing insurance or self-insurance for a health care provider who is also covered by the fund to provide an adequate defense of the fund on any claim filed that may potentially affect the fund with respect to such insurance contract or self-insurance contract. The insurer or self-insurer shall act in good faith and in a fiduciary relationship with respect to any claim affecting the fund. No settlement exceeding an amount which could require payment by the fund may be agreed to unless approved by the board of governors.

(c) It shall be the responsibility of any health care provider with a cash or surety bond in effect under s. 655.23 (3) (d) to provide an adequate defense of the fund on any malpractice claim filed or any claim filed under sub.(1m) that may potentially affect the fund. The health care provider shall act in good faith and in a fiduciary relationship with respect to any claim affecting the fund. No settlement exceeding an amount which could require payment by the fund may be agreed to unless approved by the board of governors.

(d) A person who has recovered a final judgment or a settlement approved by the board of governors against a health care provider, or an employee of a health care provider, that has coverage under the fund may file a claim with the board of governors to recover that portion of such judgment or settlement which is in excess of the limits in s. 655.23 (4) or the maximum liability limit for which the health care provider is insured, whichever limit is greater. In the event the fund incurs liability for future payments exceeding \$1,000,000 to any person under a single claim as the result of a settlement or judgment that is entered into or rendered under this chapter for an act or omission that occurred on or after May 25, 1995, the fund shall pay, after deducting the reasonable costs of collection attributable to the remaining liability, including attorney fees reduced to present value, the full medical expenses each year, plus an amount not to exceed \$500,000 per year that will pay the remaining liability over the person's anticipated lifetime, or until the liability is paid in full. If the remaining liability is not paid before the person dies, the fund may pay the remaining liability in a lump sum. Payments shall be made from money collected and paid into the fund under sub.(3) and from interest earned thereon. For claims subject to a periodic payment made under this paragraph, payments shall be made until the claim has been paid in full, except as provided in s. 655.015. Periodic payments made

under this paragraph include direct or indirect payment or commitment of moneys to or on behalf of any person under a single claim by any funding mechanism. No interest may be paid by the fund on the unpaid portion of any claim filed under this paragraph, except as provided under s. 807.01 (4), 814.04 (4) or 815.05 (8).

(e) Claims filed against the fund shall be paid in the order received within 90 days after filing unless appealed by the fund. If the amounts in the fund are not sufficient to pay all of the claims, claims received after the funds are exhausted shall be immediately payable the following year in the order in which they were received.

(6) INTEGRITY OF FUND. The fund shall be held in trust for the purposes of this chapter and may not be used for purposes other than those of this chapter.

(7) ACTIONS AGAINST INSURERS, SELF-INSURERS OR PROVIDERS. The board of governors may bring an action against an insurer, self-insurer or health care provider for failure to act in good faith or breach of fiduciary responsibility under sub.(5) (b) or (c).

History: 1975 c. 37, 79,199; 1977 c. 29, 131; 1979 c. 34,194; 1981 c. 20; 1983 a. 27, 158; 1985 a. 340; 1987 a. 27, 186,247,399; 1989 a. 102, 187,332; 1991 a. 214, 315; 1993 a. 473; 1995 a. 10; 2001 a. 65.

The patients compensation fund has the authority to sue an insurer that refuses to contribute to the settlement of a claim against its insured. *Wisconsin Patients Compensation Fund v. WHCLIP*, 200 Wis. 2d 599,547 N.W.2d 578 (1996).

The denial of a postverdict motion to add the Fund to an action where an excess verdict was returned was appropriate. Granting the motion would have denied the fund's right under sub.(5) to appear and actively defend itself in the action. *Goff v. Seldera*, 202 Wis. 2d 601,550 N.W.2d 144 (Ct. App. 1996).

Sub.(4) (b) does not provide an "explicit and unequivocal" exemption to the open records law. Any denial of an open records request under this section must state with "sufficient specificity" a public policy reason for refusing to release the requested records. *Chavala v. Bubolz*, 204 Wis. 2d 82,552 N.W.2d 892 (Ct. App. 1996).

When a hospital's violation of the federal Emergency Medical Treatment and Active Labor Act for failure to provide treatment results from a negligent medical act or a decision made in rendering care, the Fund has an obligation to provide excess coverage. When the hospital's violation results from an economic decision, the fund has no duty to provide coverage. *Burks v. St. Joseph Hospital*, 227 Wis. 2d 811,596 N.W.2d 391 (1999).

A medical malpractice plaintiff is required to name the fund as a party but may do so after the period prescribed in s. 893.55 has passed so long as the health care providers are sued before the statute of limitations has run. *Anderson v. Sauk Prairie Memorial Hospital*, 2000 WI App 108,235 Wis. 2d 249,612 N.W.2d 369.

The requirement in sub.(5) (b) that the primary insurer provide the Fund an adequate defense does not require that the insurer's attorneys must assume an attorney-client relationship with the fund. *Patients Compensation Fund v. Physicians Insurance Co. of Wisconsin*, 2000 WI App 248,239 Wis. 2d 360,620 N.W.2d 457.

655.275 Patients compensation fund peer review council. **(1) DEFINITION.** In this section, "council" means the patients compensation fund peer review council.

(2) APPOINTMENT. The board of governors shall appoint the members of the council. Section 15.09, except s. 15.09 (4) and (8), does not apply to the council. The board of governors shall designate the chairperson, vice chairperson and secretary of the council and the terms to be served by council members. The council shall consist of 5 persons, not more than 3 of whom are physicians who are actively engaged in the practice of medicine in this state. The chairperson shall be a physician and shall serve as an ex officio nonvoting member of the medical examining board.

(3) MEETINGS. The council shall meet at the call of the chairperson of the board of governors or the chairperson of the council. The council shall meet at the location determined by the person calling the meeting.

(4) REPORTS. The council shall submit to the chairperson of the board of governors, upon request of the chairperson but not more often than annually, a report on the operation of the council.

(5) DUTIES. (a) The council shall review, within one year of the date of first payment on the claim, each claim that is paid by the fund, a mandatory health care liability risk-sharing plan established under s. 619.04, a private health care liability insurer or a self-insurer for damages arising out of the rendering of medical care by a health care provider or an employee of the health care provider and shall make recommendations to all of the following:

1. The commissioner and the board of governors regarding any adjustments to be made, under s. 655.27 (3) (a) 2m., to fund fees assessed against the health care provider, based on the paid claim.

2. The commissioner and the board of governors regarding any adjustments to be made, under s. 619.04 (5) (b), to premiums assessed against a physician under a mandatory health care

liability risk-sharing plan established under s. 619.04, based on the paid claim.

3. A private health care liability insurer regarding adjustments to premiums assessed against a physician covered by private insurance, based on the paid claim, if requested by the private insurer.

(b) In developing recommendations under par.(a), the council may consult with any person and shall consult with the following:

1. If a claim was paid for damages arising out of the rendering of care by a physician, with at least one physician from the area of medical specialty of the physician who rendered the care and with at least one physician from the area of medical specialty of the medical procedure involved, if the specialty area of the procedure is different than the specialty area of the physician who rendered the care.

2. If a claim was paid for damages arising out of the rendering of care by a nurse anesthetist, with at least one nurse anesthetist.

(6) FEES. Fees sufficient to cover the council's costs, including costs of administration, shall be collected under s. 655.27 (3) (am).

(7) NOTICE OF RECOMMENDATION. The council shall notify the affected health care provider, in writing, of its recommendations to the commissioner, the board of governors or a private insurer made under sub.(5). The notice shall inform the health care provider that the health care provider may submit written comments on the council's recommendations to the commissioner, the board of governors or the private insurer within a reasonable period of time specified in the notice.

(8) PATIENT RECORDS. The council may obtain any information relating to any claim it reviews under this section that is in the possession of the commissioner or the board of governors. The council shall keep patient health care information confidential as required by s. 146.82 (2) (b).

(9) IMMUNITY. Members of the council and persons consulting with the council under sub.(5) (b) are immune from civil liability for acts or omissions while performing their duties under this section.

(10) MEMBERS' AND CONSULTANTS' EXPENSES. Notwithstanding s. 15.09 (6), any person serving on the council and any person consulting with the council under sub.(5) (b) shall be paid at a rate established by the commissioner by rule.

History: 1985 a. 340; 1989 a. 187; 1991 a. 214,315; 1999 a. 9.

SUBCHAPTER VI MEDIATION SYSTEM

655.42 Establishment of mediation system. **(1) LEGISLATIVE INTENT.** The legislature intends that the mediation system provide the persons under sub.(2) with an informal, inexpensive and expedient means for resolving disputes without litigation and intends that the director of state courts administer the mediation system accordingly.

(2) MEDIATION SYSTEM. The director of state courts shall establish a mediation system complying with this subchapter not later than September 1, 1986. The mediation system shall consist of mediation panels that assist in the resolution of disputes, regarding medical malpractice, between patients, their representatives, spouses, parents or children and health care providers.

History: 1985 a. 340; 1989 a. 187 s. 28.

655.43 Mediation requirement. The claimant and all respondents named in a request for mediation filed under s. 655.44 or 655.445 shall participate in mediation under this subchapter.

History: 1985 a. 340.

655.44 Request for mediation prior to court action. **(1) REQUEST AND FEE.** Beginning September 1, 1986, any person listed in s. 655.007 having a claim or a derivative claim under this chapter for bodily injury or death because of a tort or breach of contract based on professional services rendered or that should have been rendered by a health care provider may file a request for mediation and shall pay the fee under s. 655.54.

(2) CONTENT OF REQUEST. The request for mediation shall be in writing and shall include all of the following information:

(a) The claimant's name and city, village or town, county and state of residence.

(b) The name of the patient.

(c) The name and address of the health care provider alleged to have been negligent in treating the patient.

(d) The condition or disease for which the health care provider was treating the patient when the alleged negligence occurred and the dates of treatment.

(e) A brief description of the injury alleged to have been caused by the health care provider's negligence.

(3) DELIVERY OR REGISTERED MAIL. The request for mediation shall be delivered in person or sent by registered mail to the director of state courts.

(4) STATUTE OF LIMITATIONS. Any applicable statute of limitations is tolled on the date the director of state courts receives the request for mediation if delivered in person or on the date of mailing if sent by registered mail. The statute remains tolled until 30 days after the last day of the mediation period under s. 655.465 (7).

(5) NO COURT ACTION COMMENCED BEFORE MEDIATION. Except as provided in s. 655.445, no court action may be commenced unless a request for mediation has been filed under this section and until the expiration of the mediation period under s. 655.465 (7).

(6) NOTICE OF COURT ACTION TO DIRECTOR OF STATE COURTS. A claimant who files a request for mediation under this section and who commences a court action after the expiration of the mediation period under s. 655.465 (7) shall send notice of the court action by 1st class mail to the director of state courts.

History: 1985 a. 340; 1989 a. 187 s. 28.

A request for mediation of a claim naming only one doctor did not toll the statute of limitations applicable to claims against doctors not named in the mediation request. *Dipple v. Wisconsin Patients Compensation Fund*, 161 Wis. 2d 854, 468 N.W.2d 789 (Ct. App. 1991).

When a care provider was deceased, it was sufficient to name the deceased provider in the mediation request rather than a legal entity, such as the estate or the provider's insurer. In that case, the tolling of the statute of limitations under sub.(4) is effective against an insurer and the Wisconsin Patients Compensation Fund. Failure to name the Fund as a party to an action brought against the insurer within the 30-day period under sub.(4) barred the claim against the fund. *Geiger v. Wisconsin Health Care Liability Insurance Plan*, 196 Wis. 2d 474, 538 N.W.2d 830 (Ct. App. 1995).

The limitation periods under s. 893.55 (1) (a) and (b) are both tolled by the filing of a request for mediation under sub.(4). *Landis v. Physicians Insurance Company of Wis. Inc.*, 2001 WI 86, 245 Wis. 2d 1, 628 N.W.2d 893.

Sub.(5) does not mandate dismissal for filing an action before the expiration of the statutory mediation period. When a plaintiff fails to comply with sub.(5), the circuit court retains discretion to determine the appropriate sanction. *Ocasio v. Froedtert Memorial Lutheran Hospital*, 2002 WI 89, ___ Wis. 2d ___, 646 N.W.2d 381.

Delivery of a mediation request by regular mail is not determinative of the validity of the request. *Geisel v. Odulio*, 807 F. Supp. 500 (1992).

Failure to name the patient compensation fund in a mediation request did not exempt the fund from the tolling of the statute of limitations under sub.(4). *Geisel v. Odulio*, 807 F. Supp. 500 (1992).

655.445 Request for mediation in conjunction with court action. (1) COMMENCING ACTION, REQUEST AND FEE. Beginning September 1, 1986, any person listed in s. 655.007 having a claim or a derivative claim under this chapter for bodily injury or death because of a tort or breach of contract based on professional services rendered or that should have been rendered by a health care provider shall, within 15 days after the date of filing an action in court, file a request for mediation. The request shall be prepared and delivered in person or sent by registered mail to the director of state courts, in the form and manner required under s. 655.44 (2) and (3), together with a notice that a court action has been commenced and the fee under s. 655.54 shall be paid.

(2) SCHEDULING. All time periods under s. 802.10 (3) are tolled on the date of filing the court action. The time periods remain tolled until the expiration of the mediation period under s. 655.465 (7).

(3) NO COURT PROCEEDINGS BEFORE MEDIATION. For actions filed under sub.(1), no discovery may be made and no trial, pretrial conference or scheduling conference may be held until the expiration of the mediation period under s. 655.465 (7).

History: 1985 a. 340; 1989 a. 187 s. 28; Sup. Ct. Order No. 95-04, 191 Wis. 2d xxi (1995).

Mailing is not the equivalent of filing. Mailing is to send postal matter. Filing entails delivery to the intended recipient. *Hoffman v. Rankin*, 2002 WI App 189, ___ Wis. 2d ___, 649 N.W.2d 350.

655.45 Reports to licensing bodies. (1) For the quarter beginning on July 1, 1986, and for each quarter thereafter, the director of state courts shall file reports complying with sub.(2) with the medical examining board, the physical therapists

affiliated credentialing board, the podiatrists affiliated credentialing board, the board of nursing and the department, respectively, regarding health care providers licensed by the respective bodies.

(1m) For the quarter beginning on July 1, 1995, and for each quarter thereafter, the director of state courts shall file reports complying with sub.(2) with the dietitians affiliated credentialing board regarding health care providers certified by the dietitians affiliated credentialing board.

(2) The reports under subs.(1) and (1m) shall set forth all of the following:

(a) The names of all health care providers who are named as defendants in court actions of which the director of state courts receives notice under s. 655.44 (6) or 655.445 (1) during the quarter.

(b) Whether any court action of which the director of state courts received notice under s. 655.44 (6) or 655.445 (1) was disposed of by settlement, compromise, stipulation agreement, dismissal default or judgment during the quarter and the amount of the settlement or award to the claimant, if any, to the extent the director of state courts has any of the information under this paragraph.

History: 1985 a. 340; 1989 a. 187 s. 28; 1993 a. 107, 443; 1997 a. 75, 175.

655.455 Notice to health care providers and fund. The director of state courts shall serve notice of a request for mediation upon all health care providers named in the request, at the respective addresses provided in the request, and upon the fund, by registered mail within 7 days after the director of state courts receives the request if delivered in person or within 10 days after the date of mailing of the request to the director of state courts if sent by registered mail.

History: 1985 a. 340; 1989 a. 187 s. 28; 2001 a. 65.

15-day time limit for filing request for mediation after commencement of court action is directory, rather than mandatory. *Eby v. Kozarek*, 153 Wis. 2d 75, 450 N.W.2d 249 (1990).

655.465 Mediation panels; mediation period. (1) MEDIATION PANEL FOR DISPUTE. The director of state courts shall appoint the members of a mediation panel under sub.(2) and send notice to the claimant and all respondents by registered mail. The notice shall inform the claimant and all respondents of the names of the persons appointed to the mediation panel and the date, time and place of the mediation session. The director of state courts may change the date, time or place of the mediation session as necessary to accommodate the parties, subject to the requirement that the mediation session be held before the expiration of the mediation period under sub.(7).

(2) APPOINTMENT OF MEDIATORS. Each mediation panel shall consist of the following members appointed by the director of state courts:

(a) One public member who is neither an attorney nor a health care provider and who is selected from a list of public member mediators prepared every 2 years, or more frequently upon request of the director of state courts, by the governor or, if any person resigns or is unable to serve as a public member mediator, from a list of alternates prepared by the director of state courts.

(b) One attorney who is licensed to practice law in this state.

(c) One health care provider as follows:

1. Except as provided in subds.4. and 5., if all respondents named in the request for mediation are physicians, a physician who is licensed to practice in this state and who is selected from a list prepared by a statewide organization of physicians designated by the director of state courts.

2. Except as provided in subds.4. and 5., if none of the respondents named in the request for mediation is a physician, a health care provider who is licensed to practice in this state in the same health care field as the respondent and who is selected from a list prepared by the department or the examining board or affiliated credentialing board that regulates health care providers in that health care field.

3. Except as provided in subds.4. and 5., if more than one respondent is named in the request for mediation at least one of whom is a physician and at least one of whom is not, a health care provider who is licensed to practice in this state and who is

selected from the list under subd.1. or 2., as determined by the director of state courts.

4. If the director of state courts determines that a list under subd.1. or 2. is inadequate to permit the selection of an appropriate health care provider, a health care provider who is licensed to practice in this state and who is selected from an additional list prepared by the director of state courts.

5. If the director of state courts determines that lists under subds.1. or 2. and 4. are inadequate to permit the selection of an appropriate health care provider for a particular dispute, a health care provider who is licensed to practice in this state and who is selected by the director of state courts.

(3) FILLING VACANCIES. If a person appointed to a mediation panel under sub.(1) resigns from or is unable to serve on the mediation panel, the director of state courts shall appoint a replacement selected in the same manner as the predecessor appointee.

(4) CONFLICT OF INTEREST. No person may serve on a mediation panel if the person has a professional or personal interest in the dispute.

(5) COMPENSATION. Each mediator shall be compensated \$150 plus actual and necessary expenses for each day of mediation conducted. Compensation and expenses shall be paid out of the appropriation under s. 20.680 (2) (qm) upon such authorizations as the director of state courts may prescribe.

(6) IMMUNITY AND PRESUMPTION OF GOOD FAITH. (a) A mediator is immune from civil liability for any good faith act or omission within the scope of the mediator's performance of his or her powers and duties under this subchapter.

(b) It is presumed that every act or omission under par.(a) is a good faith act or omission. This presumption may be overcome only by clear and convincing evidence.

(7) MEDIATION PERIOD. The period for mediation shall expire 90 days after the director of state courts receives a request for mediation if delivered in person or within 93 days after the date of mailing of the request to the director of state courts if sent by registered mail, or within a longer period agreed to by the claimant and all respondents and specified by them in writing for purposes of applying ss. 655.44 (4) and (5) and 655.445 (3).

History: 1985 a. 340; 1989 a. 187 s. 28; 1989 a. 359; 1993 a. 107.

A claimant's failure to participate in mediation within the 90-day period under sub.(7) does not require dismissal. The court may determine appropriate the sanction. *Schulz v. Nienhuis*, 152 Wis. 2d 434, 448 N.W.2d 655 (1989).

If a party wishes to reschedule a mediation session for a time outside the 90-day statutory period, the party must obtain a written agreement to do so. If a respondent requests a rescheduling without providing a mutually agreed upon date within the 90 days and no written agreement is obtained, the mediation period does not terminate until the rescheduled mediation session is completed. *Sequist v. Physicians Ins. Co.*, 192 Wis. 2d 530, 531 N.W.2d 437 (Ct. App. 1995).

Completion of mediation within the period under sub.(7) is not a jurisdictional prerequisite for maintenance of a medical malpractice suit. *Bertorello v. St. Joseph's Hospital of Marshfield*, 685 F. Supp. 192 (W. D. Wis. 1988).

655.54 Filing fee. Requests for mediation filed with the director of state courts are subject to a filing fee of \$11. The filing fee shall be paid into the mediation fund under s. 655.68.

History: 1985 a. 340; 1989 a. 187 s. 28.

655.58 Mediation procedure. (1) No RECORD. Mediation shall be conducted without a stenographic record or any other transcript.

(2) No EXAMS, SUBPOENAS, OATHS. No physical examinations or production of records may be ordered, no witnesses may be subpoenaed and no oaths may be administered in mediation, whether by a mediation panel or member thereof or as a result of application to a court by any person.

(3) NO EXPERT WITNESSES; PANEL CONSULTANTS PERMITTED.

(a) Except as provided in par.(b), no expert witnesses, opinions or reports may be submitted or otherwise used in mediation.

(b) The mediation panel or any member thereof may consult with any expert, and upon authorization of the director of state courts may compensate the expert from the appropriation under s. 20.680 (2) (qm).

(4) PATIENT RECORDS CONFIDENTIAL EXCEPT TO PARTIES. All patient health care records in the possession of a mediation panel shall be kept confidential by all members of the mediation panel and all other persons participating in mediation. Every person participating in mediation shall make available to one another and all members of the mediation panel all patient health care records of the patient named in the request for mediation that are in the person's possession.

(5) COUNSEL PERMITTED. Any person participating in mediation may be represented by counsel authorized to act for his or her respective client.

History: 1985 a. 340; 1989 a. 187 s. 28.

655.61 Funding. (1) The mediation fund created under s. 655.68 shall be financed from fees charged to health care providers. The director of state courts shall, by February 1 annually, determine the revenues needed for the operation of the mediation system during the succeeding fiscal year and inform the board of governors of that amount. The director of state courts shall also inform the board of governors of the number of requests for mediation involving each type of health care provider set out in s. 655.002 for the most recent fiscal year for which statistics are available. The board of governors shall, by rule, set fees to charge health care providers at a level sufficient to provide the necessary revenue.

(1m) Notwithstanding sub.(1), the board of governors may exempt any type of health care provider set out in s. 655.002 from payment of the annual fee based on a low number of requests for mediation involving that type of health care provider.

(2) The annual fees under sub.(1) shall be collected in a manner prescribed by rule of the commissioner. The commissioner shall pay all money collected under sub.(1) into the mediation fund created under s. 655.68.

History: 1985 a. 340; 1989 a. 187; 1991 a. 214.

SUBCHAPTER VII MEDIATION FUND

655.68 Mediation fund. (1) CREATION. There is created a mediation fund to pay the administrative expenses of the mediation system created under subch. VI.

(2) ADMINISTRATION AND OPERATION. Management of the mediation fund is vested with the director of state courts.

(3) FEES. The mediation fund is financed from fees generated under ss. 655.54 and 655.61.

(4) ACCOUNTING AND FINANCIAL REPORTS. (a) Any person authorized to receive deposits, withdraw moneys, issue vouchers or otherwise disburse mediation fund moneys shall post a blanket fidelity bond in an amount reasonably sufficient to protect mediation fund assets. The cost of the bond shall be paid from the mediation fund.

(b) The state investment board shall invest money held in the mediation fund in short-term, fixed-return, interest-bearing investments. All income derived from these investments returns to the mediation fund.

(c) On or before March 1 annually, the director of state courts shall submit a report on the operation of the mediation system and on the status of the mediation fund to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3).

History: 1985 a. 340; 1987 a. 186; 1989 a. 187 s. 28; 1991 a. 214

CHAPTER 961

UNIFORM CONTROLLED SUBSTANCES ACT

961.001	Declaration of intent.		961.43	Prohibited acts C—penalties.
		SUBCHAPTER I	961.435	Specific penalty.
		DEFINITIONS	961.437	Possession and disposal of waste from manufacture of methamphetamine.
961.01	Definitions.		961.44	Penalties under other laws.
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		STANDARDS AND SCHEDULES	961.455	Using a child for illegal drug distribution or manufacturing purposes.
961.11	Authority to control.		961.46	Distribution to persons under age 18.
961.115	Native American Church exemption.		961.47	Conditional discharge for possession or attempted possession as first offense.
961.12	Nomenclature.		961.472	Assessment; certain possession or attempted possession offenses.
961.13	Schedule I tests.		961.475	Treatment option.
961.14	Schedule I.		961.48	Second or subsequent offenses.
961.15	Schedule II tests.		961.49	Distribution of or possession with intent to deliver a controlled substance on or near certain places.
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961.17	Schedule III tests.		961.50	Suspension or revocation of operating privilege.
961.18	Schedule III.			SUBCHAPTER V
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961.20	Schedule IV.		961.51	Powers of enforcement personnel.
961.21	Schedule V tests.		961.52	Administrative inspections and warrants.
961.22	Schedule V.		961.53	Violations constituting public nuisance.
961.23	Dispensing of schedule V substances.		961.54	Cooperative arrangements and confidentiality.
961.24	Publishing of updated schedules.		961.55	Forfeitures.
961.25	Controlled substance analog treated as a schedule I substance		961.555	Forfeiture proceedings.
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961.31	Rules.			SUBCHAPTER VI
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961.335	Special use authorization.		961.571	Definitions.
961.34	Controlled substances therapeutic research.		961.572	Determination.
961.36	Controlled substances board duties relating to diversion control and prevention, compliance with controlled substances law and advice and assistance.		961.573	Possession of drug paraphernalia.
961.38	Prescriptions.		961.574	Manufacture or delivery of drug paraphernalia.
961.39	Limitations on optometrists.		961.575	Delivery of drug paraphernalia to a minor.
961.395	Limitation on advanced practice nurses.		961.576	Advertisement of drug paraphernalia.
		SUBCHAPTER IV	961.577	Municipal ordinances.
		OFFENSES AND PENALTIES		SUBCHAPTER VII
961.41	Prohibited acts A—penalties.			MISCELLANEOUS
961.42	Prohibited acts B—penalties.		961.61	Uniformity of interpretation.
			961.62	Short title.

NOTE: See Chapter 161, 1993–94 Stats., for detailed notes on actions by the Controlled Substances Board. (Chapter 961 was renumbered from ch. 161 by 1995 Acts, Act 448.)

961.001 Declaration of intent. The legislature finds that the abuse of controlled substances constitutes a serious problem for society. As a partial solution, these laws regulating controlled substances have been enacted with penalties. The legislature, recognizing a need for differentiation among those who would violate these laws makes this declaration of legislative intent:

(lg) Many of the controlled substances included in this chapter have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of this state.

(1m) The manufacture, distribution, delivery, possession and use of controlled substances for other than legitimate purposes have a substantial and detrimental effect on the health and general welfare of the people of this state.

(1r) Persons who illicitly traffic commercially in controlled substances constitute a substantial menace to the public health and safety. The possibility of lengthy terms of imprisonment must exist as a deterrent to trafficking by such persons. Upon conviction for trafficking, such persons should be sentenced in a manner which will deter further trafficking by them, protect the public from their pernicious activities, and restore them to legitimate and socially useful endeavors.

(2) Persons who habitually or professionally engage in commercial trafficking in controlled substances and prescription drugs should, upon conviction, be sentenced to substantial terms

of imprisonment to shield the public from their predatory acts. However, persons addicted to or dependent on controlled substances should, upon conviction, be sentenced in a manner most likely to produce rehabilitation.

(3) Upon conviction, persons who casually use or experiment with controlled substances should receive special treatment geared toward rehabilitation. The sentencing of casual users and experimenters should be such as will best induce them to shun further contact with controlled substances and to develop acceptable alternatives to drug abuse.

History: 1971 c. 219; 1995 a. 448 ss. 107 to 110, 462, 463; Stats. 1995 s. 961.001.

SUBCHAPTER I

DEFINITIONS

961.01 Definitions. As used in this chapter:

(1) “Administer”, unless the context otherwise requires, means to apply a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(a) A practitioner or, in the practitioner’s presence, by the practitioner’s authorized agent; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) “Agent”, unless the context otherwise requires, means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. “Agent” does not include

a common or contract carrier, public warehouse keeper or employee of the carrier or warehouse keeper while acting in the usual and lawful course of the carrier's or warehouse keeper's business.

(2m) (a) "Anabolic steroid" means any drug or hormonal substance, chemically or pharmacologically related to testosterone, except estrogens, progestin, and corticosteroids, that promotes muscle growth. The term includes all of the substances included in s. 961.18 (7), and any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers, that are theoretically possible within the specific chemical designation, and if such esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers promote muscle growth.

(b) Except as provided in par. (c), the term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States Secretary of Health and Human Services for such administration.

(c) If a person prescribes, dispenses or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of par. (a).

(4) "Controlled substance" means a drug, substance or immediate precursor included in schedules I to V of subch. 11.

(4m) (a) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance included in schedule I or II and:

1. Which has a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II; or

2. With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II.

(b) "Controlled substance analog" does not include:

1. A controlled substance;

2. A substance for which there is an approved new drug application;

3. A substance with respect to which an exemption is in effect for investigational use by a particular person under 21 USC 355 to the extent that conduct with respect to the substance is permitted by the exemption; or

4. Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(5) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(6) "Deliver" or "delivery", unless the context otherwise requires, means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is any agency relationship.

(7) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(8) "Dispenser" means a practitioner who dispenses.

(9) "Distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog.

(10) "Distributor" means a person who distributes.

(1m) "Diversion" means the transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(11) (a) "Drug" means any of the following:

1. A substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary or any supplement to any of them.

2. A substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals.

3. A substance, other than food, intended to affect the structure or any function of the body of humans or animals.

4. A substance intended for use as a component of any article specified in subd. 1., 2. or 3.

(b) "Drug" does not include devices or their components, parts or accessories.

(11m) "Drug enforcement administration" means the drug enforcement administration of the U.S. department of justice or its successor agency.

(12) "Immediate precursor" means a substance which the controlled substances board has found to be, and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(12g) "Isomer" means an optical isomer, but in ss. 961.14 (2) (er) and (qs) and 961.16 (2) (b) 1. "isomer" includes any geometric isomer; in ss. 961.14 (2) (cg), (tg) and (xm) and 961.20 (4) (am) "isomer" includes any positional isomer; and in ss. 961.14 (2) (rj) and (4) and 961.18 (2m) "isomer" includes any positional or geometric isomer.

(12m) "Jail or correctional facility" means any of the following:

(a) A Type 1 prison, as defined in s. 301.01 (5).

(b) A jail, as defined in s. 302.30.

(c) A house of correction.

(d) A Huber facility under s. 303.09.

(e) A lockup facility, as defined in s. 302.30

(f) A work camp under s. 303.10.

(13) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of, or to produce, prepare, propagate, compound, convert or process, a controlled substance or controlled substance analog, directly or indirectly, by extraction from substances of natural origin, chemical synthesis or a combination of extraction and chemical synthesis, including to package or repackage or the packaging or repackaging of the substance, or to label or to relabel or the labeling or relabeling of its container. "Manufacture" does not mean to prepare, compound, package, repackage, label or relabel or the preparation, compounding, packaging, repackaging, labeling or relabeling of a controlled substance:

(a) By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(b) By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(14) "Marijuana" means all parts of the plants of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant,

its seeds or resin, including tetrahydrocannabinols. "Marijuana" does include the mature stalks if mixed with other parts of the plant, but does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(14m) "Multiunit public housing project" means a public housing project that includes 4 or more dwelling units in a single parcel or in contiguous parcels.

(15) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and substances derived from opium, and any compound, derivative or preparation of opium or substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(bm) Synthetic opiate, and any derivative of synthetic opiate, including any of their isomers, esters, ethers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation.

(c) Opium poppy, poppy straw and concentrate of poppy straw.

(d) Any compound, mixture or preparation containing any quantity of any substance included in pars. (a) to (c).

(16) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" includes opium, substances derived from opium and synthetic opiates. "Opiate" does not include, unless specifically scheduled as a controlled substance under s. 961.11, the dextrorotatory isomer of 3-methoxy-N-methylmorphinan and its salts (dextromethorphan). "Opiate" does include the racemic and levorotatory forms of dextromethorphan.

(17) "Opium poppy" means any plant of the species *Papaver somniferum* L., except its seeds.

(18) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(19) "Practitioner" means:

(a) A physician, advanced practice nurse, dentist, veterinarian, podiatrist, optometrist, scientific investigator or, subject to s. 448.21 (3), a physician assistant, or other person licensed, registered, certified or otherwise permitted to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(b) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

(20) "Production", unless the context otherwise requires, includes the manufacturing of a controlled substance or controlled substance analog and the planting, cultivating, growing or harvesting of a plant from which a controlled substance or controlled substance analog is derived.

(20g) "Public housing project" means any housing project or development administered by a housing authority, as defined in s. 16.30 (2).

(20h) "Public transit vehicle" means any vehicle used for providing transportation service to the general public.

(20i) "Scattered-site public housing project" means a public housing project that does not include 4 or more dwelling units in a single parcel or in contiguous parcels.

(21) "Ultimate user" means an individual who lawfully possesses a controlled substance for that individual's own use or for the use of a member of that individual's household or for administering to an animal owned by that individual or by a member of that individual's household.

(21m) "Vehicle" has the meaning given in s. 939.22 (44).

(22) "Youth center" means any center that provides, on a regular basis, recreational, vocational, academic or social services activities for persons younger than 21 years old or for those persons and their families.

History: 1971 c. 219; 1979 c. 89; 1981 c. 200, 206; 1983 a. 500 s. 43; 1989 a. 31; CSB 221; 1993 a. 87, 129, 138, 184, 281.482; 1995 a. 281 s. 2; 1995 a. 448 ss. 112 to 143, 247, 248, 464 to 468; Stats. 1995 s. 961.01; 1997 a. 35 s. 338; 1997 a. 67; 1999 a. 85.

A constructive delivery under sub. (6) may be found if a single actor leaves a substance somewhere for later retrieval by another. *State v. Wilson*, 180 Wis. 2d 414, 509 N.W.2d 128 (Ct. App. 1993).

Day care centers are a subset of "youth centers" as defined in s. 961.01(22) and come within the definition of places listed in s. 961.49 (2). *State v. Van Riper*, 222 Wis. 2d 197, 586 N.W.2d 198 (Ct. App. 1998).

SUBCHAPTER II

STANDARDS AND SCHEDULES

961.11 Authority to control. (1) The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 pursuant to the rule-making procedures of ch. 227.

(1m) In making a determination regarding a substance, the board shall consider the following:

(a) The actual or relative potential for abuse;

(b) The scientific evidence of its pharmacological effect, if known;

(c) The state of current scientific knowledge regarding the substance;

(d) The history and current pattern of abuse;

(e) The scope, duration and significance of abuse;

(f) The risk to the public health;

(g) The potential of the substance to produce psychological or physical dependence liability; and

(h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(1r) The controlled substances board may consider findings of the federal food and drug administration or the drug enforcement administration as prima facie evidence relating to one or more of the determinative factors.

(2) After considering the factors enumerated in sub. (1m), the controlled substances board shall make findings with respect to them and promulgate a rule controlling the substance upon finding that the substance has a potential for abuse.

(3) The controlled substances board, without regard to the findings required by sub. (2) or ss. 961.13, 961.15, 961.17, 961.19 and 961.21 or the procedures prescribed by subs. (1), (1m), (1r) and (2), may add an immediate precursor to the same schedule in which the controlled substance of which it is an immediate precursor is included or to any other schedule. If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(4) If a substance is designated, rescheduled or deleted as a controlled substance under federal law and notice thereof is given to the controlled substances board, the board by affirmative action shall similarly treat the substance under this chapter after the expiration of 30 days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under 21 USC 811

(h), unless within that 30-day period, the board or an interested party objects to the treatment of the substance. If no objection is made, the board shall promulgate, without making the determinations or findings required by subs. (1), (1m), (1r) and (2) or s. 961.13, 961.15, 961.17, 961.19 or 961.21, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling or deleting the substance. If an objection is made the board shall publish notice of receipt of the objection and the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall make a determination with respect to the treatment of the substance as provided in subs. (1), (1m), (1r) and (2) and shall publish its decision, which shall be final unless altered by statute. Upon publication of an objection to the treatment by the board, action by the board under this chapter is stayed until the board promulgates a rule under sub. (2).

(4m) The controlled substances board, by rule and without regard to the requirements of sub. (1m), may schedule a controlled substance analog as a substance in schedule I regardless of whether the substance is substantially similar to a controlled substance in schedule I or II, if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under 21 USC 355. Upon receipt of notice under s. 961.25, the board shall initiate scheduling of the controlled substance analog on an emergency basis under this subsection. The scheduling of a controlled substance analog under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors under sub. (1m) (d), (e) and (f), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors under sub. (1m). The board may not promulgate a rule under this subsection until it initiates a rule-making proceeding under subs. (1), (1m), (1r) and (2) with respect to the controlled substance analog. A rule promulgated under this subsection lapses upon the conclusion of the rule-making proceeding initiated under subs. (1), (1m), (1r) and (2) with respect to the substance.

(5) The authority of the controlled substances board to control under this section does not extend to intoxicating liquors, as defined in s. 139.01 (3), to fermented malt beverages as defined in s. 125.02, or to tobacco.

(6) (a) The controlled substances board shall not have authority to control a nonnarcotic substance if the substance may, under the federal food, drug and cosmetic act and the laws of this state, be lawfully sold over the counter without a prescription.

(b) If the board finds that any nonnarcotic substance barred from control under this chapter by par. (a) is dangerous to or is being so used as to endanger the public health and welfare, it may request the department of justice in the name of the state to seek a temporary restraining order or temporary injunction under ch. 813 to either ban or regulate the sale and possession of the substance. The order or injunction shall continue until the adjournment of the legislature convened next following its issuance. In making its findings as to nonnarcotic substances under this paragraph, the board shall consider the items specified in sub. (1m).

History: 1971 c. 119, 307; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1981 c. 79 s. 18; 1983 a. 189 s. 329 (13); 1995 a. 448 ss. 145 to 152, 469, 470; Stats. 1995 s. 961.11.

Cross Reference: See also CSB, Wis. adm. code

961.115 Native American Church exemption. This chapter does not apply to the nondrug use of peyote and mescaline in the bona fide religious ceremonies of the Native American Church.

History: 1971 c. 219; 1995 a. 448 s. 153; Stats. 1995 s. 961.115.

Because the exemption is based upon the unique cultural heritage of Native Americans, it is not an unconstitutional classification. *State v. Peck*, 143 Wis. 2d 624, 422 N.W.2d 160 (Ct. App. 1988).

961.12 Nomenclature. The controlled substances listed in or added to the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 may be listed or added by any official, common, usual, chemical or trade name used for the substance.

History: 1971 c. 219; 1995 a. 448 s. 154; Stats. 1995 s. 961.12.

961.13 Schedule I tests. (1m) The controlled substances board shall add a substance to schedule I upon finding that the substance:

- (a) Has high potential for abuse;
- (b) Has no currently accepted medical use in treatment in the United States; and
- (c) Lacks accepted safety for use in treatment under medical supervision.

(2m) The controlled substances board may add a substance to schedule I without making the findings required under sub. (1m) if the substance is controlled under schedule I of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 155, 156, 471; Stats. 1995 s. 961.13.

961.14 Schedule I. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule I:

(2) SYNTHETIC OPIATES. Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation:

(a) Acetyl- α -methylfentanyl (N-[1-(1-methyl-2-phenylethyl)-4-piperidinyl]-N-phenylacetamide);

(ag) Acetylmehtadol;

(am) Allylprodine;

(b) Alphacetylmethadol (except levo- α -phacetylmethadol (LAAM));

(bm) Alphameprodine;

(c) Alphamethadol;

(cd) Alpha-methylfentanyl (N-[1-(1-methyl-2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);

(cg) Alpha-methylthiofentanyl (N-[1-(1-methyl-2-(2-thienylethyl)-4-piperidinyl]-N-phenylpropanamide);

(cm) Benzethidine;

(d) Betacetylmethadol;

(dg) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);

(dm) Betameprodine;

(e) Betamethadol;

(em) Betaprodine;

(er) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

(f) Clonitazene;

(fm) Dextromoramide;

(gm) Diampromide;

(h) Diethylthiambutene;

(hg) Difenoxin;

(hm) Dimenoxadol;

(j) Dimepheptanol;

(jm) Dimethylthiambutene;

(k) Dioxaphetyl butyrate;

(km) Dipipanone;

(m) Ethylmethylthiambutene;

(mm) Etonitazene;

(n) Etoxadrine;

- (nm) Furethidine;
- (p) Hydroxypethidine;
- (pm) Ketobeniidone;
- (q) Levomoramide;
- (qm) Levophenacylniorphan;
- (qs) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);
- (r) Morpheridine;
- (rg) MPPP (1-methyl-4-propionoxypiperidine);
- (rj) 3-methylthiofentanyl (N-[3-methyl-1-(2-(2-thienyl)ethyl)-4-piperidinyl]-N-phenylpropanamide);
- (rm) Noracymethadol;
- (s) Norlevorphanol;
- (sm) Normethadone;
- (t) Norpianone;
- (tg) Para-fluorofentanyl (N-[1-(2-phenylethyl)-4-piperidinyl]-N-(4-fluorophenyl)propanamide);
- (tm) Phenadoxone;
- (u) Phenampromide;
- (um) Phenomorphan;
- (v) Phenoperidine;
- (vg) PEPAP (1-(2-phenylethyl)-4-phenyl-4-acetoxypiperidine);
- (vm) Piritramide;
- (w) Proheptazine;
- (wm) Properidine;
- (wn) Propiram;
- (x) Racemoramide;
- (xm) Thiofentanyl (N-[1-(2-(2-thienyl)ethyl)-4-piperidinyl]-N-phenylpropanamide);
- (xr) Tilidine;
- (y) Trimeperidine.

(3) SUBSTANCES DERIVED FROM OPIUM. Any material, compound, mixture or preparation which contains any quantity of any of the following substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

- (a) Acetorphine;
- (b) Acetyldihydrocodeine;
- (c) Benzylmorphine;
- (d) Codeine methylbromide;
- (e) Codeine-N-oxide;
- (f) Cyprenorphine;
- (g) Desomorphine;
- (h) Dihydromorphine;
- (hm) Drotebanol;
- (j) Etorphine, except its hydrochloride salts;
- (k) Heroin;
- (m) Hydromorphenol;
- (n) Methyl-desorphine;
- (p) Methyl-dihydromorphine;
- (q) Morphine methylbromide;
- (r) Morphine methylsulfonate;
- (s) Morphine-N-oxide;
- (t) Myrophine;
- (u) Nicocodeine;
- (v) Nicomorphine;
- (w) Normorphine;
- (x) Pholcodine;
- (y) Thebacon.

(4) HALLUCINOGENIC SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following hallucinogenic substances, including any of their salts,

isomers and salts of isomers that are theoretically possible within the specific chemical designation, in any form including a substance, salt, isomer or salt of an isomer contained in a plant, obtained from a plant or chemically synthesized:

- (a) 3,4-methylenedioxyamphetamine, commonly known as "MDA";
- (ag) 3,4-methylenedioxyethylamphetamine, commonly known as "MDE";
- (am) 3,4-methylenedioxymethamphetamine, commonly known as "MDMA";
- (ar) N-hydroxy-3,4-methylenedioxyamphetamine;
- (b) 5-methoxy-3,4-methylenedioxyamphetamine;
- (bm) 4-ethyl-2,5-dimethoxyamphetamine, commonly known as "DOET";
- (c) 3,4,5-trimethoxyamphetamine;
- (cm) Alpha-ethyltryptamine;
- (d) Bufotenine;
- (e) Diethyltryptamine;
- (f) Dimethyltryptamine;
- (g) 4-methyl-2,5-dimethoxyamphetamine, commonly known as "STP";
- (h) Ibogaine;
- (j) Lysergic acid diethylamide, commonly known as "LSD";
- (m) Mescaline, in any form, including mescaline contained in peyote, obtained from peyote or chemically synthesized;
- (mn) Parahexyl (3-hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo(b, d)pyran);
- (n) Phencyclidine, commonly known as "PCP";
- (p) N-ethyl-3-piperidyl benzilate;
- (q) N-methyl-3-piperidyl benzilate;
- (r) Psilocybin;
- (s) Psilocin;
- (t) Tetrahydrocannabinols, commonly known as "THC", in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized;
- (u) 1-[1-(2-thienyl)cyclohexyl]piperidine, which is the thiophene analog of phencyclidine;
- (ud) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, which is the thiophene pyrrolidine analog of phencyclidine;
- (ug) N-ethyl-1-phenylcyclohexylamine, which is the ethylamine analog of phencyclidine;
- (ur) 1-(1-phenylcyclohexyl)pyrrolidine, which is the pyrrolidine analog of phencyclidine;
- (v) 2,5-dimethoxyamphetamine;
- (w) 4-bromo-2,5-dimethoxyamphetamine, commonly known as "DOB";
- (wg) 4-bromo-2,5-dimethoxy-beta-phenylethylamine, commonly known as "2C-B" or "Nexus";
- (x) 4-methoxyamphetamine.

(5) DEPRESSANTS Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

- (ag) Gamma-hydroxybutyric acid (commonly known as gamma hydroxybutyrate or "GHB") and gamma-butyrolactone.
- (am) Mecloqualone.
- (b) Methaqualone.

(6) IMMEDIATE PRECURSORS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

- (a) Immediate precursors to phencyclidine:
 1. 1-phenylcyclohexylamine.
 2. 1-piperidinocyclohexanecarbonitrile.

(7) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

- (ag) Cathinone.
- (am) Aminorex.
- (b) Fenethylamine.
- (c) N-ethylamphetamine.
- (d) 4-methylaminorex.
- (e) N,N-dimethylamphetamine.
- (L) Methcathinone.
- (p) 4-methylthioamphetamine, commonly known as "4-MTA."

History: 1971 c. 219; 1981 c. 206; CSB 2.16, 2.15, 2.17, 2.18, 2.19, 2.20; 1989 a. 121; CSB 2.21; 1993a. 98,118; CSB 2.22; 1995a. 225; 1995 a. 448 ss. 157 to 165; Stats. 1995 s. 961.14; 1997 a. 220 1999a. 21; 2001 a. 16.

NOTE: See 1979-80 Statutes and 1993-94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

A chemical test need not be specifically for marijuana in order to be probative beyond a reasonable doubt. State v. Wind, 60 Wis. 2d 267, 208 N.W.2d 357 (1973). THC is properly classified as Schedule I substance. State v. Olson, 127 Wis. 2d 412, 380 N.W.2d 375 (Ct. App. 1985).

Stems and branches supporting marijuana leaves or buds are not "mature stalks" under sub. (14). State v. Martinez, 210 Wis. 2d 397, 563 N.W.2d 922 (Ct. App. 1997).

961.15 Schedule II tests. (1m) The controlled substances board shall add a substance to schedule II upon finding that:

- (a) The substance has high potential for abuse;
- (b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (c) The abuse of the substance may lead to severe psychological or physical dependence.

(2m) The controlled substances board may add a substance to schedule II without making the findings required under sub. (1m) if the substance is controlled under schedule II of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 166, 167, 472; Stats. 1995 s. 961.15.

961.16 Schedule II. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule II:

(2) SUBSTANCES OF PLANT ORIGIN. Any material, compound, mixture or preparation which contains any quantity of any of the following substances in any form, including a substance contained in a plant, obtained from a plant, chemically synthesized or obtained by a combination of extraction from a plant and chemical synthesis:

(a) Opium and substances derived from opium, and any salt, compound, derivative or preparation of opium or substances derived from opium. Apomorphine, dextrorphan, nalbuphine, butorphanol, nalmefene, naloxone and naltrexone and their respective salts and the isoquinoline alkaloids of opium and their respective salts are excluded from this paragraph. The following substances, and any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

- 1. Opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium and tincture of opium.
- 2. Opium poppy and poppy straw.
- 3. Concentrate of poppy straw, which is the crude extract of poppy straw in either liquid, solid or powder form containing the phenanthrene alkaloids of the opium poppy.
- 4. Codeine.
- 4m. Dihydrocodeine.

4r. Dihydrocodeine.

5. Ethylmorphine.

6. Etorphine hydrochloride.

7. Hydrocodone, also known as dihydrocodeinone.

8. Hydromorphone, also known as dihydromorphinone.

9. Metopon.

10. Morphine.

11. Oxycodone.

12. Oxymorphone.

13. Thebaine.

(b) Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized coca leaves or extractions which do not contain cocaine or ecgonine are excluded from this paragraph. The following substances and any of their salts, esters, isomers and salts of esters and isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

- 1. Cocaine.
- 2. Ecgonine.

(3) SYNTHETIC OPIATES Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation:

- (a) Alfentanil;
- (am) Alphaprodine;
- (b) Anileridine;
- (c) Bezitramide;
- (cm) Carfentanil;
- (e) Diphenoxylate;
- (f) Fentanyl;
- (g) Isomethadone;
- (gm) Levo-alphaacetylmethadol (LAAM);
- (h) Levomethorphan;
- (j) Levorphanol;
- (k) Meperidine, also known as pethidine;
- (m) Meperidine — Intermediate — A, 4-cyano-1-methyl-4-phenylpiperidine;
- (n) Meperidine — Intermediate — B, ethyl-4-phenylpiperidine-4-carboxylate;
- (p) Mependine — Intermediate — I, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (q) Metazocine;
- (r) Methadone;
- (s) Methadone — Intermediate, 4-cyano-2-dimethylamino-4,4-diphenylbutane;
- (t) Moramide — Intermediate, 2-methyl-3-morpholino-1,1-diphenylpropanecarboxylic acid;
- (u) Phenazocine;
- (v) Piminodine;
- (w) Racemethorphan;
- (x) Racemorphan;
- (xm) Remifentanyl;
- (y) Sufentanil.

(5) STIMULANTS Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

- (a) Amphetamine.
- (b) Methamphetamine.
- (c) Phenmetrazine.
- (d) Methylphenidate.

(7) **DEPRESSANTS.** Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

- (a) Amobarbital;
- (am) Glutethimide;
- (bj) Pentobarbital;
- (c) Secobarbital.

(8) **IMMEDIATE PRECURSORS.** Any material, compound, mixture or preparation which contains any quantity of the following substances:

(a) An immediate precursor to amphetamine or methamphetamine:

- 1. Phenylacetone, commonly known as "P2P".

(10) **HALLUCINOGENIC SUBSTANCES.** (b) Nabilone (another name for nabilone is (+)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy -6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one).

History: 1971 c. 219; 1981 c. 6,206; CSB 2.16, 2.17, 2.19; 1989 a. 121; CSB 2.21; 1993 a. 98; CSB 2.22; 1995 a. 448 ss. 168 to 178,473; Stats. 1995 s. 961.16; CSB 2.25; CSB 2.26.

NOTE: See 1979-80 Statutes and 1993-94 Statutes for notes on actions by controlled substances board under s. 161.11(1), 1993 Stats.

At a preliminary hearing, the state must show that a substance was probably l-cocaine rather than d-cocaine. State v. Russo, 101 Wis. 2d 206,303 N.W.2d 846 (Ct. App. 1981).

961.17 Schedule III tests. (1m) The controlled substances board shall add a substance to schedule III upon finding that:

(a) The substance has a potential for abuse less than the substances included in schedules I and II;

(bj) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(2m) The controlled substances board may add a substance to schedule III without making the findings required under sub. (1m) if the substance is controlled under schedule III of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 179, 180,474; Stats. 1995 s. 961.17.

961.18 Schedule III. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule III:

(2m) **STIMULANTS.** Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

- (a) Benzphetamine;
- (b) Chlorphentermine;
- (c) Clortermine;
- (e) Phendimetrazine.

(3) **DEPRESSANTS.** Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Any substance which contains a derivative of barbituric acid;

- (b) Chlorhexadol;
- (d) Lysergic acid;
- (e) Lysergic acid amide;
- (f) Methyprylon;

(h) Sulfondictylmethane;

(j) Sulfonethylmethane;

(k) Sulfonmethane;

(km) Tiletamine and Zolazepam in combination;

(m) Any compound, mixture, or preparation containing any of the following drugs and one or more other active medicinal ingredients not included in any schedule:

- 1. Amobarbital.
- 2. Secobarbital.
- 3. Pentobarbital.

(n) Any of the following drugs in suppository dosage form approved by the federal food and drug administration for marketing only as a suppository:

- 1. Amobarbital.
- 2. Secobarbital.
- 3. Pentobarbital.

(4) **OTHER SUBSTANCES** Any material, compound, mixture or preparation which contains any quantity of any of the following substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ak) Ketamine.

(an) Nalorphine.

(4m) **HALLUCINOGENIC SUBSTANCES.** Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. food and drug administration approved drug product. (Other names for dronabinol are (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo(b, d)pyran-1-ol, and (-)-delta-9-(trans)-tetrahydrocannabinol.)

(5) **NARCOTIC DRUGS.** Any material, compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, calculated as the free anhydrous base or alkaloid, in limited quantities as follows:

(a) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(c) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with a four-fold or greater quantity of an isoquinoline alkaloid of opium.

(d) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Not more than 300 milligrams of ethylmorphine per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.

(g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(h) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) **EXCEPTIONS** The controlled substances board may except by rule any compound, mixture or preparation containing any stimulant or depressant substance included in sub. (2m) or (3)

from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(7) ANABOLIC STEROIDS. Any material, compound, mixture, or preparation containing any quantity of any of the following anabolic steroids, including any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers that are theoretically possible within the specific chemical designation:

- (a) Boldenone;
- (b) ~~4-chlorotestosterone~~, which is also called clostebol;
- (c) Dehydrochloromethyltestosterone;
- (d) 4-dihydrotestosterone, which is also called stanolone;
- (e) Drostanolone;
- (f) Ethylestrenol;
- (g) Fluoxymesterone;
- (h) Formebolone, which is also called fromebolone;
- (i) Mesterolone;
- (j) Methandienone, which is also called methandrostenolone;
- (k) Methandriol;
- (l) Methenolone;
- (m) Methyltestosterone;
- (n) Mibolerone;
- (o) Nandrolone;
- (p) Norethandrolone;
- (q) Oxandrolone;
- (r) Oxymesterone;
- (s) Oxymetholone;
- (t) Stanozolol;
- (u) Testolactone;
- (v) Testosterone;
- (w) Trenbolone.

History: 1971 c. 219; 1981 c. 6; 1981 c. 206 ss. 32 to 40, 57; CSB 2.19, 2.21; 1995 a. 448 ss. 181 to 200, 475, 476; Stats. 1995 s. 961.18; 1997 a. 220; CSB 2.25.

NOTE: See 1993-94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

961.19 Schedule IV tests. (1m) The controlled substances board shall add a substance to schedule IV upon finding that:

- (a) The substance has a low potential for abuse relative to substances included in schedule III;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in schedule III.

(2m) The controlled substances board may add a substance to schedule IV without making the findings required under sub. (1m) if the substance is controlled under schedule IV of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 201, 202, 477; Stats. 1995 s. 961.19.

961.20 Schedule IV. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule IV:

(2) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

- (a) Alprazolam;

- (am) Barbitol;
- (ar) Bromazepam;
- (av) Camazepam;
- (b) Chloral betaine;
- (c) Chloral hydrate;
- (cd) Clobazam;
- (cg) Clotiazepam;
- (cm) Chlordiazepoxide;
- (cn) Clonazepam;
- (co) Cloxazolam;
- (cp) Clorazepate;
- (cq) Delorazepam;
- (cr) Diazepam;
- (cs) Dichloralphenazone;
- (cu) Estazolam;
- (d) Ethchlorvynol;
- (e) Ethinamate;
- (ed) Ethyl loflazepate;
- (eg) Fludiazepam;
- (ej) Flunitrazepam;
- (em) Flurazepam;
- (eo) Halazepam;
- (ep) Haloxazolam;
- (eq) Ketazolam;
- (er) Lorazepam;
- (es) Loprazolam;
- (eu) Lormetazepam;
- (ew) Mebutamate;
- (ey) Medazepam;
- (f) Methohexital;
- (g) Meprobamate;
- (h) Methylphenobarbital, which is also called mephobarbital;
- (hg) Midazolam;
- (hh) Nimetazepam;
- (hj) Nitrazepam;
- (hk) Nordiazepam;
- (hm) Oxazepam;
- (hr) Oxazolam;
- (j) Paraldehyde;
- (k) Petrichloral;
- (m) Phenobarbital;
- (md) Pinazepam;
- (mg) Prazepam;
- (mm) Quazepam;
- (n) Temazepam;
- (ng) Tetrazepam;
- (nm) Triazolam;
- (o) Zaleplon;
- (p) Zolpidem.

(2m) STIMULANTS Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

- (a) Diethylpropion.
- (ad) Cathine.
- (ag) ~~N,N-dimethyl-1,2-diphenylethylamine~~, commonly known as "SPA".
- (ak) Ephedrine, if ephedrine is the only active medicinal ingredient or if there are only therapeutically insignificant quantities of another active medicinal ingredient.
- (ar) Fencamfamine.

- (at) Fenproporex.
- (bm) Mazindol.
- (br) Mefenorex.
- (bu) Modafinil.
- (c) Pemoline, including its organometallic complexes and chelates.
- (d) Phentermine.
- (e) Pipradrol.
- (f) Sibutramine.

(3) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (a) Not more than 1.0 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(4) OTHER SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

- (a) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionyloxybutane).
- (am) Fenfluramine, including any of its isomers and salts of isomers.
- (b) Pentazocine, including any of its isomers and salts of isomers.
- (c) Butorphanol, including any of its isomers and salts of isomers.

(5) EXCEPTIONS. The controlled substances board may except by rule any compound, mixture or preparation containing any depressant substance included in sub. (2) from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

History: 1971 c. 219; 1979 c. 32; 1981 c. 206 ss. 34m, 41 to 52; CSB 2.15, 2.19, 2.21; 1993 a. 468; 1995 a. 448 ss. 203 to 220, 478, 479; Stats. 1995 s. 961.20; CSB 2.24, 2.25, 2.28.

NOTE: See 1979–80 Statutes and 1993–94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

961.21 Schedule V tests. (1m) The controlled substances board shall add a substance to schedule V upon finding that:

- (a) The substance has low potential for abuse relative to the controlled substances included in schedule IV;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances included in schedule IV.

(2m) The controlled substances board may add a substance to schedule V without making the findings required by sub. (1m) if the substance is controlled under schedule V of 21 USC 811 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 221, 222, 480; Stats. 1995 s. 961.21.

961.22 Schedule V. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule V:

(1m) NARCOTIC DRUGS. Any material, compound, mixture or preparation containing any quantity of any of the following sub-

stances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

- (a) Buprenorphine.

(2) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- (b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- (c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- (d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
- (f) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(3) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

- (a) Pyrovalerone.

History: 1971 c. 219; 1981 c. 206; CSB 2.15; 1985 a. 135; CSB 2.17; 1995 a. 448 ss. 223 to 227, 481; Stats. 1995 s. 961.22.

961.23 Dispensing of schedule V substances. The dispensing of schedule V substances is subject to the following conditions:

- (1) That they be dispensed and sold in good faith as a medicine, and not for the purpose of evading this chapter.
- (2) That they be sold at retail only by a registered pharmacist when sold in a retail establishment.
- (3) That, when sold in a retail establishment, they bear the name and address of the establishment on the immediate container of said preparation.
- (4) That any person purchasing such a substance at the time of purchase present to the seller that person's correct name and address. The seller shall record the name and address and the name and quantity of the product sold. The purchaser and the seller shall sign the record of this transaction. The giving of a false name or false address by the purchaser shall be prima facie evidence of a violation of s. 961.43 (1) (a).
- (5) That no person may purchase more than 8 ounces of a product containing opium or more than 4 ounces of a product containing any other schedule V substance within a 48-hour period without the authorization of a physician, dentist or veterinarian nor may more than 8 ounces of a product containing opium or more than 4 ounces of a product containing any other schedule V substance be in the possession of any person other than a physician, dentist, veterinarian or pharmacist at any time without the authorization of a physician, dentist or veterinarian.

History: 1971 c. 219; 1973 c. 12 s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s. 228. Stats. 1995 s. 961.23.

961.24 Publishing of updated schedules. The controlled substances board shall publish updated schedules annually. The failure of the controlled substances board to publish an updated schedule under this section is not a defense in any administrative or judicial proceeding under this chapter.

History: 1971 c. 219; 1993 a. 213; 1995 a. 448 s. 229; Stats. 1995 s. 961.24.

961.25 Controlled substance analog treated as a schedule I substance. A controlled substance analog, to the extent it is intended for human consumption, shall be treated, for the purposes of this chapter, as a substance included in schedule I, unless a different treatment is specifically provided. No later than 60 days after the commencement of a prosecution concerning a controlled substance analog, the district attorney shall provide the controlled substances board with information relevant to emergency scheduling under s. 961.11(4m). After a final determination by the controlled substances board that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may be commenced or continued.

History: 1995 a. 448.

SUBCHAPTER III

REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

961.31 Rules. The pharmacy examining board may promulgate rules relating to the manufacture, distribution and dispensing of controlled substances within this state.

History: 1971 c. 219; 1995 a. 448 s. 231; Stats. 1995 s. 961.31.

Cross Reference: See also ch. Phar 8, Wis. adm. code.

961.32 Possession authorization. (1) Persons registered under federal law to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances in this state to the extent authorized by their federal registration and in conformity with the other provisions of this chapter.

(2) The following persons need not be registered under federal law to lawfully possess controlled substances in this state:

(a) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent's or employee's business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(c) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) Any person exempted under federal law, or for whom federal registration requirements have been waived.

History: 1971 c. 219.336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32.

A doctor or dentist who dispenses drugs to a patient within the course of professional practice is not subject to criminal liability. *State v. Townsend*, 107 Wis. 2d 24, 318 N.W.2d 361 (1982).

961.335 Special use authorization. (1) Upon application the controlled substances board may issue a permit authorizing a person to manufacture, obtain, possess, use, administer or dispense a controlled substance for purposes of scientific research, instructional activities, chemical analysis or other special uses, without restriction because of enumeration. No person shall engage in any such activity without a permit issued under this section, except that an individual may be designated and authorized to receive the permit for a college or university department, research unit or similar administrative organizational unit and students, laboratory technicians, research specialists or chemical analysts under his or her supervision may be permitted possession and use of controlled substances for these purposes without obtaining an individual permit.

(2) A permit issued under this section shall be valid for one year from the date of issue.

(3) The fee for a permit under this section shall be an amount determined by the controlled substances board but shall not exceed \$25. No fee may be charged for permits issued to employees of state agencies or institutions.

(4) Permits issued under this section shall be effective only for and shall specify:

(a) The name and address of the permittee.

(b) The nature of the project authorized by the permit.

(c) The controlled substances to be used in the project, by name if included in schedule I, and by name or schedule if included in any other schedule.

(d) Whether dispensing to human subjects is authorized.

(5) A permit shall be effective only for the person, substances and project specified on its face and for additional projects which derive directly from the stated project. Upon application, a valid permit may be amended to add a further activity or to add further substances or schedules to the project permitted thereunder. The fee for such amendment shall be determined by the controlled substances board but shall not exceed \$5.

(6) Persons who possess a valid permit issued under this section are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

(7) The controlled substances board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative or other proceeding to identify or to identify to the board the individuals who are the subjects of research for which the authorization was obtained.

(8) The controlled substances board may promulgate rules relating to the granting of special use permits including, but not limited to, requirements for the keeping and disclosure of records other than those that may be withheld under sub. (7), submissions of protocols, filing of applications and suspension or revocation of permits.

(9) The controlled substances board may suspend or revoke a permit upon a finding that there is a violation of the rules of the board.

History: 1971 c. 219; 1975 c. 110, 199; 1977 c. 26; 1995 a. 448 s. 233; Stats. 1995 s. 961.335.

961.34 Controlled substances therapeutic research.

Upon the request of any practitioner, the controlled substances board shall aid the practitioner in applying for and processing an investigational drug permit for marijuana under 21 USC 355 (i). If the federal food and drug administration issues an investigational drug permit, the controlled substances board shall approve which pharmacies can distribute the marijuana to patients upon written prescription. Only pharmacies located within hospitals are eligible to receive the marijuana for distribution. The controlled substances board shall also approve which practitioners can write prescriptions for the marijuana.

History: 1981 c. 193; 1983 a. 189 s. 329 (18); 1985 a. 146 s. 8; 1995 a. 448 s. 16 to 19; Stats. 1995 s. 961.34.

961.36 Controlled substances board duties relating to diversion control and prevention, compliance with controlled substances law and advice and assistance.

(1) The controlled substances board shall regularly prepare and make available to state regulatory, licensing and law enforcement agencies descriptive and analytic reports on the potential for diversion and actual patterns and trends of distribution, diversion and abuse within the state of certain controlled substances the board selects that are listed in s. 961.16, 961.18, 961.20 or 961.22.

(1m) At the request of the department of regulation and licensing or a board, examining board or affiliated credentialing board in the department of regulation and licensing, the controlled substances board shall provide advice and assistance in matters

related to the controlled substances law to the department or to the board, examining board or affiliated credentialing board in the department making the request for advice or assistance.

(2) The controlled substances board shall enter into written agreements with local, state and federal agencies to improve the identification of sources of diversion and to improve enforcement of and compliance with this chapter and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent or control drug diversion and drug abuse. The board shall convene periodic meetings to coordinate a state diversion prevention and control program. The board shall assist and promote cooperation and exchange of information among agencies and with other states and the federal government.

(3) The controlled substances board shall evaluate the outcome of its program under this section and shall annually submit a report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172(3), on its findings with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of the diversion of controlled substances.

History: 1981 c. 200; 1987 a. 186; 1995 a. 305 ss. 2.3; 1995 a. 448 s. 234; Stats. 1995 s. 961.36; 1997 a. 35 s. 339.

961.38 Prescriptions. (lg) In this section, “medical treatment” includes dispensing or administering a narcotic drug for pain, including intractable pain.

(1r) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon oral or electronic prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with rules of the pharmacy examining board promulgated under s. 961.31. No prescription for a schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug, shall not be dispensed without a written, oral or electronic prescription of a practitioner. The prescription shall not be filled or refilled except as designated on the prescription and in any case not more than 6 months after the date thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

(4) A substance included in schedule V may be distributed or dispensed only for a medical purpose, including medical treatment or authorized research.

(4g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner’s profession.

(4r) A pharmacist is immune from any civil or criminal liability and from discipline under s. 450.10 for any act taken by the pharmacist in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(5) No practitioner shall prescribe, orally, electronically or in writing, or take without a prescription a controlled substance included in schedule I, II, III or IV for the practitioner’s own personal use.

History: 1971 c. 219, 1975 c. 190, 421; 1977 c. 203; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27.

961.39 Limitations on optometrists. An optometrist who is certified under s. 449.18:

(1) May not prescribe or administer a controlled substance included in schedule I or II.

(2) May prescribe or administer only those controlled substances included in schedules III, IV and V that are permitted for prescription or administration under the rules promulgated under s. 449.18 (8).

(3) Shall include with each prescription order all of the following:

(a) A statement that he or she is certified under s. 449.18.

(b) The indicated use of the controlled substance included in schedule III, IV or V so prescribed.

(4) May not dispense other than by prescribing or administering.

History: 1989 a. 31; 1995 a. 448 s. 241; Stats. 1995 s. 961.39.

961.395 Limitation on advanced practice nurses.

(1) An advanced practice nurse who is certified under s. 441.16 may prescribe controlled substances only as permitted by the rules promulgated under s. 441.16 (3).

(2) An advanced practice nurse certified under s. 441.16 shall include with each prescription order the advanced practice nurse prescriber certification number issued to him or her by the board of nursing.

(3) An advanced practice nurse certified under s. 441.16 may dispense a controlled substance only by prescribing or administering the controlled substance or as otherwise permitted by the rules promulgated under s. 441.16 (3).

History: 1995 a. 448.

SUBCHAPTER IV

OFFENSES AND PENALTIES

961.41 Prohibited acts A—penalties. (1) MANUFACTURE, DISTRIBUTION OR DELIVERY. Except as authorized by this chapter, it is unlawful for any person to manufacture, distribute or deliver a controlled substance or controlled substance analog. Any person who violates this subsection is subject to the following penalties:

(a) *Schedule I and II narcotic drugs generally.* Except as provided in par. (d), if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug, or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Schedule I, II, and III nonnarcotic drugs generally.* Except as provided in pars. (cm) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule I or II, the person is guilty of a Class H felony.

(cm) *Cocaine and cocaine base.* If the person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount manufactured, distributed, or delivered is:

1g. One gram or less, the person is guilty of a Class G felony.

1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams, the person is guilty of a Class C felony.

(d) *Heroin.* If the person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount manufactured, distributed or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(e) *Phencyclidine, amphetamine, methamphetamine, and methcathinone*. If the person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, or methcathinone, or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, or methcathinone, and the amount manufactured, distributed, or delivered is:

1. **Three** grams or **less**, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(f) *Lysergic acid diethylamide*. If the person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount manufactured, distributed, or delivered is:

1. One gram or less, the person is guilty of a Class G felony.

2. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

3. More than 5 grams, the person **is** guilty of a Class E felony.

(g) *Psilocin and psilocybin*. If the person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount manufactured, distributed or delivered is:

1. One hundred grams or less, the person is guilty of a Class G felony.

2. More than 100 grams but not more than 500 grams, the person is guilty of a Class F felony.

3. More than 500 grams, the person is guilty of a Class E felony.

(h) *Tetrahydrocannabinols*. If the person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 (4) **(t)**, or a controlled substance analog of tetrahydrocannabinols, and the amount manufactured, distributed or delivered is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

2. More than 200 grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinols, the person is guilty of a Class H felony.

3. More than 1,000 grams but not more than 2,500 grams, or more than 20 plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.

4. More than 2,500 grams but not more than 10,000 grams, or more than 50 plants containing tetrahydrocannabinols but not more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class F felony.

5. More than 10,000 grams, or more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

(hm) *Certain other schedule I controlled substances and ketamine*. If the person violates this subsection with respect to gamma-hydroxybutyric acid, gamma-butyrolactone, 3,4-methylenedioxyamphetamine, ~~4-bromo-2,5-dimethoxy-beta-phenylethylamine~~, 4-methylthioamphetamine, ketamine, or a controlled substance analog of gamma-hydroxybutyric acid, gamma-butyrolactone, 3,4-methylenedioxyamphetamine, ~~4-bromo-2,5-dimethoxy-beta-phenylethylamine~~, or 4-methylthioamphetamine and the amount manufactured, distributed, or delivered is:

1. **Three** grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person **is** guilty of a Class C felony.

(i) *Schedule IV drugs generally*. Except as provided in par. (im), if a person violates this subsection with respect to a substance included in schedule IV, the person is guilty of a Class H felony.

(im) *Flunitrazepam*. If a person violates this subsection with respect to flunitrazepam and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person **is** guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(j) *Schedule V drugs*. If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class I felony.

(1m) POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER. Except as authorized by this chapter, it **is** unlawful for any person to possess, with intent to manufacture, distribute or deliver, a controlled substance or a controlled substance analog. Intent under this subsection may be demonstrated by, without limitation because of enumeration, evidence of the quantity and monetary value of the substances possessed, the possession of manufacturing implements or paraphernalia, and the activities or statements of the person in possession of the controlled substance or a controlled substance analog prior to and after the alleged violation. Any person who violates this subsection is subject to the following penalties:

(a) *Schedule I and II narcotic drugs generally*. Except as provided in par. (d), if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or **II** which is a narcotic drug, the person **is** guilty of a Class E felony.

(b) *Schedule I, II, and III nonnarcotic drugs generally*. Except as provided in pars. (cm) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule I or II, the person is guilty of a Class H felony.

(cm) *Cocaine and cocaine base*. If a person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1g. One gram or **less**, the person is guilty of a Class G felony.

1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams, the person is guilty of a Class C felony.

(d) *Heroin*. If a person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(e) *Phencyclidine, amphetamine, methamphetamine, and methcathinone*. If a person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, or methca-

thinone, or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, or methcathinone, and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class **F** felony.
2. More than 3 grams but not more than 10 grams, the person is guilty of a Class **E** felony.
3. More than 10 grams but not more than 50 grams, the person is guilty of a Class **D** felony.

4. More than 50 grams, the person is guilty of a Class **C** felony.

(f) *Lysergic acid diethylamide*. If a person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One gram or less, the person is guilty of a Class **G** felony.
2. More than one gram but not more than 5 grams, the person is guilty of a Class **F** felony.
3. More than 5 grams, the person is guilty of a Class **E** felony.

(g) *Psilocin and psilocybin*. If a person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One hundred grams or less, the person is guilty of a Class **G** felony.
2. More than 100 grams but not more than 500 grams, the person is guilty of a Class **F** felony.
3. More than 500 grams, the person is guilty of a Class **E** felony.

(h) *Tetrahydrocannabinols*. If a person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class **I** felony.
2. More than 200 grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinols, the person is guilty of a Class **H** felony.
3. More than 1,000 grams but not more than 2,500 grams, or more than 20 plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person is guilty of a Class **G** felony.
4. More than 2,500 grams but not more than 10,000 grams, or more than 50 plants containing tetrahydrocannabinols but not more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class **F** felony.
5. More than 10,000 grams, or more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class **E** felony.

(hm) *Certain other schedule I controlled substances and ketamine*. If the person violates this subsection with respect to gamma-hydroxybutyric acid, gamma-butyrolactone, 3,4-methylenedioxymethamphetamine, 4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylthioamphetamine, ketamine, or a controlled substance analog of gamma-hydroxybutyric acid, gamma-butyrolactone, 3,4-methylenedioxymethamphetamine, 4-bromo-2,5-dimethoxy-beta-phenylethylamine, or 4-methylthioamphetamine is subject to the following penalties if the amount possessed, with intent to manufacture, distribute, or deliver is:

1. Three grams or less, the person is guilty of a Class **F** felony.
2. More than 3 grams but not more than 10 grams, the person is guilty of a Class **E** felony.
3. More than 10 grams but not more than 50 grams, the person is guilty of a Class **D** felony.
4. More than 50 grams, the person is guilty of a Class **C** felony.

(i) *Schedule IV drugs generally*. Except as provided in par. (im), if a person violates this subsection with respect to a substance included in schedule IV, the person is guilty of a Class **H** felony.

(im) *Flunitrazepam*. If a person violates this subsection with respect to flunitrazepam and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class **F** felony.
2. More than 3 grams but not more than 10 grams, the person is guilty of a Class **E** felony.
3. More than 10 grams but not more than 50 grams, the person is guilty of a Class **D** felony.
4. More than 50 grams, the person is guilty of a Class **C** felony.

(j) *Schedule V drugs*. If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class **I** felony.

(1n) **PIPERIDINE POSSESSION**. (a) No person may possess any quantity of piperidine or its salts with the intent to use the piperidine or its salts to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(b) No person may possess any quantity of piperidine or its salts if he or she knows or has reason to know that the piperidine or its salts will be used to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(c) A person who violates par. (a) or (b) is guilty of a Class **F** felony.

(1q) **PENALTY RELATING TO TETRAHYDROCANNABINOLS IN CERTAIN CASES**. Under s. 961.49 (2), 1999 stats., and subs. (1) (h) and (1m) (h), if different penalty provisions apply to a person depending on whether the weight of tetrahydrocannabinols or the number of plants containing tetrahydrocannabinols is considered, the greater penalty provision applies.

(1) **DETERMINING WEIGHT OF SUBSTANCE**. In determining amounts under s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or tetrahydrocannabinols or any controlled substance analog of any of these substances together with any compound, mixture, diluent, plant material or other substance mixed or combined with the controlled substance or controlled substance analog. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t) and includes the weight of any marijuana.

(1x) **CONSPIRACY**. Any person who conspires, as specified in s. 939.31, to commit a crime under sub. (1) (cm) to (h) or (1m) (cm) to (h) is subject to the applicable penalties under sub. (1) (cm) to (h) or (1m) (cm) to (h).

(2) **COUNTERFEIT SUBSTANCES**. Except as authorized by this chapter, it is unlawful for any person to create, manufacture, distribute, deliver or possess with intent to distribute or deliver, a counterfeit substance. Any person who violates this subsection is subject to the following penalties:

(a) *Counterfeit schedule I and II narcotic drugs*. If a person violates this subsection with respect to a counterfeit substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class **E** felony.

(b) *Counterfeit schedule I, II, III, and IV drugs*. Except as provided in pars. (bm) and (cm), if a person violates this subsection with respect to any other counterfeit substance included in schedule I, II, III, or IV, the person is guilty of a Class **H** felony.

(bm) A counterfeit substance that is a counterfeit of phencyclidine, methamphetamine, lysergic acid diethylamide, gamma-hydroxybutyric acid, gamma-butyrolactone, 3,4-methylenedioxymethamphetamine

4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylthioamphetamine, or ketamine is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or

possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

(cm) *Counterfeit flunitrazepam.* A counterfeit substance which is flunitrazepam, is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

(d) *Counterfeit schedule V drugs.* If a person violates this subsection with respect to a counterfeit substance included in schedule V, the person is guilty of a Class I felony.

(3g) **POSSESSION.** No person may possess or attempt to possess a controlled substance or a controlled substance analog unless the person obtains the substance or the analog directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless the person is otherwise authorized by this chapter to possess the substance or the analog. Any person who violates this subsection is subject to the following penalties:

(am) *Schedule I and II narcotic drugs.* If a person possesses a controlled substance included in schedule I or II which is a narcotic drug, or possesses a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class I felony.

(b) *Other drugs generally.* Except as provided in pars. (c), (d), (e) and (f), if the person possesses or attempts to possess a controlled substance or controlled substance analog, other than a controlled substance included in schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor, punishable under s. 939.61.

(c) *Cocaine and cocaine base.* If a person possess or attempts to possess cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, the person shall be fined not more than \$5,000 and may be imprisoned for not more than one year in the county jail upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(d) *Certain hallucinogenic and stimulant drugs.* If a person possesses or attempts to possess lysergic acid diethylamide, phenylcyclidine, amphetamine, methamphetamine, methcathinone, psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phenylcyclidine, amphetamine, methamphetamine, methcathinone, psilocin or psilocybin, the person may be fined not more than \$5,000 or imprisoned for not more than one year in the county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(e) *Tetrahydrocannabinols.* If a person possesses or attempts to possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, the person may be fined not more than \$1,000 or imprisoned for not more than 6 months or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States

or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(f) *Gamma-hydroxybutyric acid, gamma-butyrolactone, ketamine, or flunitrazepam.* If a person possesses or attempts to possess gamma-hydroxybutyric acid, gamma-butyrolactone, ketamine or flunitrazepam, the person is guilty of a Class H felony.

(4) **IMITATION CONTROLLED SUBSTANCES.** (am) 1. No person may knowingly distribute or deliver, attempt to distribute or deliver or cause to be distributed or delivered a noncontrolled substance and expressly or impliedly represent any of the following to the recipient:

a. That the substance is a controlled substance.

b. That the substance is of a nature, appearance or effect that will allow the recipient to display, sell, distribute, deliver or use the noncontrolled substance as a controlled substance, if the representation is made under circumstances in which the person has reasonable cause to believe that the noncontrolled substance will be used or distributed for use as a controlled substance.

2. Proof of any of the following is prima facie evidence of a representation specified in subd. 1. a. or b.:

a. The physical appearance of the finished product containing the substance is substantially the same as that of a specific controlled substance.

b. The substance is unpackaged or is packaged in a manner normally used for the illegal delivery of a controlled substance.

c. The substance is not labeled in accordance with 21 USC 352 or 353.

d. The person distributing or delivering, attempting to distribute or deliver or causing distribution or delivery of the substance to be made states to the recipient that the substance may be resold at a price that substantially exceeds the value of the substance.

3. A person who violates this paragraph is guilty of a Class I felony.

(bm) It is unlawful for any person to agree, consent or offer to lawfully manufacture, deliver, distribute or dispense any controlled substance to any person, or to offer, arrange or negotiate to have any controlled substance unlawfully manufactured, delivered, distributed or dispensed, and then manufacture, deliver, distribute or dispense or offer, arrange or negotiate to have manufactured, delivered, distributed or dispensed to any such person a substance which is not a controlled substance. Any person who violates this paragraph may be fined not more than \$500 or imprisoned for not more than 6 months or both.

(5) **DRUG ABUSE PROGRAM IMPROVEMENT SURCHARGE.** (a) When a court imposes a fine for a violation of this section, it shall also impose a drug abuse program improvement surcharge in an amount of 50% of the fine and penalty assessment imposed.

(b) The clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2.

(c) All moneys collected from drug surcharges shall be deposited by the state treasurer in and utilized in accordance with s. 20.435 (6) (gb).

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490 Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. i6, 109.

An inference of intent could be drawn from possession of hashish with a street value of \$2,000 to \$4,000 and opium with a street value of \$20,000 to \$24,000. State v. Trimbell, 64 Wis. 2d 379, 219 N.W.2d 369 (1974).

No presumption of intent to deliver is raised by sub. (1m). The statute merely lists evidence from which intent may be inferred. State ex rel. Bena v. Hon. John J. Crosetto, 73 Wis. 2d 261, 243 N.W.2d 442 (1976).

Evidence of a defendant's possession of a pipe containing burnt residue of marijuana was insufficient to impute knowledge to the defendant of possession of a controlled substance. Kabat v. State, 76 Wis. 2d 224, 251 N.W.2d 38 (1977).

This section prohibits the act of manufacture, as defined in 161.01 (13) [now 961.01 (13)]. Possession of a controlled substance created by an accused is not required for conviction. This section is not unconstitutionally vague. State ex rel. Bell v. Columbia County Ct. 82 Wis. 2d 401, 263 N.W.2d 162 (1978).

A conviction under sub. (1m) was upheld when the defendant possessed 1/3 gram of cocaine divided into 4 packages and evidence of defendant's prior sales of other drugs was admitted under s. 904.04 (2) as probative of intent to deliver the cocaine. *Peaslev v. State*, 83 Wis. 2d 224, 265 N.W.2d 506 (1978).

It is the weapons found at the accused's home were admissible as part of the chain of facts relevant to the accused's intent to deliver. *State v. Wedge*, 116 Wis. 2d 514, 302 N.W.2d 810 (1981).

It is a procuring agent of the drug; it is a valid exchange under this. By facilitating a drug deal, the defendant was party to the crime. *State v. Stevens*, 116 Wis. 2d 605, 312 N.W.2d 721 (1984).

When police confiscated a large quantity of drugs from an individual's home and the next day searched the defendant upon his return to the home, the fact that the defendant was in possession of the same drugs, the defendant's conviction for the lesser-included offense of possession of a controlled substance with intent to deliver did not violate double jeopardy. *State v. Stevens*, 116 Wis. 2d 303, 367 N.W.2d 788 (1985).

The fact that a defendant is in possession of a controlled substance even though a controlled substance is delivered. *State v. Cooper*, 12 Wis. 2d 429, 580 N.W.2d 383 (Ct. App. 1993).

Possession is not a lesser included offense of manufacturing. *State v. P.*, 143 Wis. 2d 422, 160 N.W.2d 111 (1988).

Identification of a controlled substance can be established by circumstantial evidence such as lay testimony based on familiarity through prior use, trading, or law enforcement. *State v. Anderson*, 176 Wis. 2d 196, N.W.2d (Ct. App. 1993).

A conspiracy under sub. (1x) must involve at least 2 people with each subject to the same penalty for the conspiracy. If the buyer of drugs is guilty of misdemeanor possession only, a felony conspiracy charge may not be brought against the buyer. *State v. Smith*, 189 Wis. 2d 496, 525 N.W.2d 264 (1995).

The state is not required to prove that a defendant knew the exact nature or precise chemical name of a possessed controlled substance. The state must only prove that the defendant knew or believed that the substance was a controlled substance. *State v. Sartin*, 200 Wis. 2d 47, 546 N.W.2d 449 (1996).

A delivery conspiracy under sub. (1x) requires an agreement between a buyer and a seller that the buyer will deliver at least some of the controlled substance to a 3rd party. *State v. Cavallari*, 214 Wis. 2d 42, 571 N.W.2d 176 (Ct. App. 1997).

Standing alone, the presence of drugs in someone's system is insufficient to support a conviction for possession, but it is circumstantial evidence of prior possession. Evidence that the defendant was selling drugs is irrelevant to a charge of simple possession. Evidence that the defendant had money but no job does not have a tendency to prove possession. *State v. Griffin*, 220 Wis. 2d 371, 584 N.W.2d 127 (Ct. App. 1998).

Double jeopardy was not violated when the defendant was convicted of separate offenses under s. 161.41 [now 961.41] for simultaneous delivery of different controlled substances. *Leonard v. Warden, Dodge Correctional Inst.*, 631 F. Supp. 1403 (1986).

961.42 Prohibited acts B—penalties. (1) It is unlawful for any person knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for manufacturing, keeping or delivering them in violation of this chapter.

(2) Any person who violates this section is guilty of a Class I felony.

History: 1971 c. 219; 1995 a. 448 s. 267; Stats. 1995 s. 961.42; 1997 a. 283; 2001 a. 109.

"Keeping" a substance under sub. (1) means more than simple possession; it means keeping for the purpose of warehousing or storage for ultimate manufacture or delivery. *State v. Brooks*, 124 Wis. 2d 349, 369 N.W.2d 183 (Ct. App. 1985).

961.43 Prohibited acts C—penalties. (1) It is unlawful for any person:

(a) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(b) Without authorization, to make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as:

1. To make a counterfeit substance; or
2. To duplicate substantially the physical appearance, form, package or label of a controlled substance.

(2) Any person who violates this section is guilty of a Class H felony.

History: 1971 c. 219; 1981 c. 90; 1995 a. 448 s. 268; Stats. 1995 s. 961.43, 1997 a. 283; 2001 a. 109.

961.435 Specific penalty. Any person who violates s. 961.38 (5) may be fined not more than \$500 or imprisoned not more than 30 days or both.

History: 1975 c. 190; 1995 a. 448 s. 269; Stats. 1995 s. 961.435.

961.437 Possession and disposal of waste from manufacture of methamphetamine. (1) In this section:

(a) "Dispose of" means discharge, deposit, inject, dump, spill, leak or place methamphetamine manufacturing waste into or on any land or water in a manner that may permit the waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.

(b) "Intentionally" has the meaning given in s. 939.23 (3).

(c) "Methamphetamine manufacturing waste" means any solid, semisolid, liquid or contained gaseous material or article that results from or is produced by the manufacture of methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter.

(2) No person may do any of the following:

(a) Knowingly possess methamphetamine manufacturing waste.

(b) Intentionally dispose of methamphetamine manufacturing waste.

(3) Subsection (2) does not apply to a person who possesses or disposes of methamphetamine manufacturing waste under all of the following circumstances:

(a) The person is storing, treating or disposing of the methamphetamine manufacturing waste in compliance with chs. 287, 289, 291 and 292 or the person has notified a law enforcement agency of the existence of the methamphetamine manufacturing waste.

(b) The methamphetamine manufacturing waste had previously been possessed or disposed of by another person in violation of sub. (2).

(4) A person who violates sub. (2) is subject to the following penalties:

(a) For a first offense, the person is guilty of a Class H felony.

(b) For a 2nd or subsequent offense, the person is guilty of a Class F felony.

(5) Each day of a continuing violation of sub. (2) (a) or (b) constitutes a separate offense.

History: 1999 a. 129; 2001 a. 109.

961.44 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

History: 1971 c. 219; 1995 a. 448 s. 271; Stats. 1995 s. 961.44.

961.45 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

History: 1971 c. 219; 1995 a. 448 s. 272; Stats. 1995 s. 961.45.

Under this section, a "prosecution" is to be equated with a conviction or acquittal. The date on which a sentence is imposed is not relevant to the determination of whether a "prosecution" has occurred. *State v. Petty*, 201 Wis. 2d 337, 548 N.W.2d 817 (1996).

This section bars a Wisconsin prosecution under ch. 961 for the same conduct on which a prior federal conviction is based. The restriction is not limited to the same crime as defined by its statutory elements. *State v. Hansen*, 2001 WI 53, 243 Wis. 328, 627 N.W. 2d 195.

961.455 Using a child for illegal drug distribution or manufacturing purposes. (1) Any person who has attained the age of 17 years who knowingly solicits, hires, directs, employs or uses a person who is under the age of 17 years for the purpose of violating s. 961.41 (1) is guilty of a Class F felony.

(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. It is not a defense to a prosecution under this section that the actor mistakenly believed that the person solicited, hired, directed, employed or used under sub. (1) had attained the age of 18 years, even if the mistaken belief was reasonable.

(3) Solicitation under sub. (1) occurs in the manner described under s. 939.30, but the penalties under sub. (1) apply instead of the penalties under s. 939.30.

(4) If the conduct described under sub. (1) results in a violation under s. 961.41 (1), the actor is subject to prosecution and conviction under s. 961.41 (1) or this section or both.

History: 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283; 2001 a. 109.

961.46 Distribution to persons under age 18. If a person 17 years of age or over violates s. 961.41 (1) by distributing or delivering a controlled substance or a controlled substance analog to a person 17 years of age or under who is at least 3 years his or her junior, the applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not more than 5 years.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 27; 1995 a. 448 ss. 276 to 279; **Stats.** 1995 s. 961.46; 1999 a. 48, 57; 2001 a. 109.

961.47 Conditional discharge for possession or attempted possession as first offense. (1) Whenever any person who has not previously been convicted of any offense under this chapter, or of any offense under any statute of the United States or of any state or of any county ordinance relating to controlled substances or controlled substance analogs, narcotic drugs, marijuana or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (b), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for 2nd or subsequent convictions under s. 961.48. There may be only one discharge and dismissal under this section with respect to any person.

(2) Within 20 days after probation is granted under this section, the clerk of court shall notify the department of justice of the name of the individual granted probation and any other information required by the department. This report shall be upon forms provided by the department.

History: 1971 c. 219; 1985 a. 29; 1989 a. 121; 1991 a. 39; 1995 a. 448 s. 285; Stats. 1995 s. 961.47.

A disposition of probation without entering a judgment of guilt, was not appealable because there was no judgment. If a defendant desires either a final judgment or order in the nature of a final judgment for appeal purposes, he or she has only to withhold consent. *State v. Ryhack*, 64 Wis. 2d 574, 219 N.W.2d 263 (1974).

The reference to s. 161.41 (3) [now 961.41 (3g)] in sub. (1) means that proceedings may only be deferred for convictions for crimes encompassed by s. 161.41 (3) [now 961.41 (3g) (b)]. *State v. Boyer*, 198 Wis. 2d 837, 543 N.W.2d 562 (Ct. App. 1995).

961.472 Assessment; certain possession or attempted possession offenses. (1) In this section, "facility" means an approved public treatment facility, as defined under s. 51.45 (2) (c).

(2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (am), (c), or (d), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department of health and family services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to determine whether the treat-

ment option under s. 961.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fin).

(3) The facility shall submit an assessment report within 14 days to the court. At the request of the facility, the court may extend the time period by not more than 20 additional workdays. The assessment report may include a proposed treatment plan.

(4) The court shall consider the assessment report in determining whether the treatment option under s. 961.475 is appropriate.

(5) If the court finds that a person under sub. (2) is already covered by or has recently completed an assessment under this section or a substantially similar assessment, the court is not required to make the order under sub. (2).

History: 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 27 s. 9126 (19); 1995 a. 448 s. 286; Stats. 1995 s. 961.472; 1999 a. 48; 2001 a. 109.

961.475 Treatment option. Whenever any person pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g), the court may, upon request of the person and with the consent of a treatment facility with special inpatient or outpatient programs for the treatment of drug dependent persons, allow the person to enter the treatment programs voluntarily for purposes of treatment and rehabilitation. Treatment shall be for the period the treatment facility feels is necessary and required, but shall not exceed the maximum sentence allowable unless the person consents to the continued treatment. At the end of the necessary and required treatment, with the consent of the court, the person may be released from sentence. If treatment efforts are ineffective or the person ceases to cooperate with treatment rehabilitation efforts, the person may be remanded to the court for completion of sentencing.

History: 1971 c. 219, 336; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 448 s. 287; **Stats.** 1995 s. 961.475.

961.48 Second or subsequent offenses. (1) If a person is charged under sub. (2m) with a felony offense under this chapter that is a 2nd or subsequent offense as provided under sub. (3) and the person is convicted of that 2nd or subsequent offense, the maximum term of imprisonment for the offense may be increased as follows:

(a) By not more than 6 years, if the offense is a Class C or D felony.

(b) By not more than 4 years, if the offense is a Class E, F, G, H, or I felony.

(2m) (a) Whenever a person charged with a felony offense under this chapter may be subject to a conviction for a 2nd or subsequent offense, he or she is not subject to an enhanced penalty under sub. (1) unless any applicable prior convictions are alleged in the complaint, indictment or information or in an amended complaint, indictment or information that is filed under par. (b) 1.

A person is not subject to an enhanced penalty under sub. (1) for an offense if an allegation of applicable prior convictions is withdrawn by an amended complaint filed under par. (b) 2.

(b) Notwithstanding s. 971.29 (1), at any time before entry of a guilty or no contest plea or the commencement of a trial, a district attorney may file without leave of the court an amended complaint, information or indictment that does any of the following:

1. Charges an offense as a 2nd or subsequent offense under this chapter by alleging any applicable prior convictions.

2. Withdraws the charging of an offense as a 2nd or subsequent offense under this chapter by withdrawing an allegation of applicable prior convictions.

(3) For purposes of this section, a felony offense under this chapter is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor offense under this chapter or under any statute of the United States or of any state relating to controlled substances or controlled substance analogs,

narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 482, 490; 1995 a. 402; 1995 a. 448 s. 288; Stats. 1995s. 961.48; 1997 a. 35 ss. 340, 584; 1997 a. 220; 1999 a. 48; 2001 a. 109.

The trial court erred in imposing a 2nd sentence on a defendant convicted of a 2nd violation of 161.41 (1) (a) and 161.14 (3) (k) [now 961.41 (1) (a) and 961.14 (3) (k)]. While the repeater statute, 161.48 [now 961.48], allows imposition of a penalty not exceeding twice that allowable for a 1st offense, it does not of itself create a crime and cannot support a separate and independent sentence. *Olson v. State*, 69 Wis. 2d 605, 230 N.W.2d 634.

For offenses under ch. 161 [now 961], the court may apply this section or s. 939.62, but not both. *State v. Ray*, 166 Wis. 2d 855, 481 N.W.2d 288 (Ct. App. 1992).

In sentencing a defendant when the maximum sentence is doubled under this section, the court considers the same factors it considers in all sentencing, including prior convictions. *State v. Canadeo*, 168 Wis. 2d 559, 484 N.W.2d 340 (Ct. App. 1992).

Sentencing under this section was improper when the defendant did not admit a prior conviction and the state did not offer proof of one. *State v. Coolidge*, 173 Wis. 2d 783, 496 N.W.2d 701 (Ct. App. 1993).

Sub. (4) sets forth a limitation on the 2nd or subsequent offense: the previous offense may be any conviction under ch. 161 [now 961]. *State v. Robertson*, 174 Wis. 2d 36, 496 N.W.2d 221 (Ct. App. 1993).

This section is self-executing; a prosecutor may not prevent the imposition of the sentences under this section by not charging the defendant as a repeater. *State v. Young*, 180 Wis. 2d 700, 511 N.W.2d 309 (Ct. App. 1993).

Conviction under this section for a second or subsequent offense does not require proof of the prior offense at trial beyond a reasonable doubt. *State v. Miles*, 221 Wis. 2d 56, 584 N.W.2d 704 (Ct. App. 1998).

A conviction for possessing drug paraphernalia under s. 961.573 qualifies as a prior offense under sub. (3). *State v. Moline*, 229 Wis. 2d 38, 598 N.W.2d 929 (Ct. App. 1999).

961.49 Distribution of or possession with intent to deliver a controlled substance on or near certain places.

If any person violates s. 961.41 (1) (cm), (d), (e), (f), (g) or (h) by delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (e), (f), (g) or (h) by possessing with intent to deliver or distribute, cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or any form of tetrahydrocannabinols or a controlled substance analog of any of these substances and the delivery, distribution or possession takes place under any of the following circumstances, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years:

(1) While the person is in or on the premises of a scattered-site public housing project.

(2) While the person is in or on or otherwise within 1,000 feet of any of the following:

- (a) A state, county, city, village or town park.
- (b) A jail or correctional facility.
- (c) A multiunit public housing project.
- (d) A swimming pool open to members of the public.
- (e) A youth center or a community center.
- (f) Any private or public school premises.
- (g) A school bus, as defined in s. 340.01 (56).

(3) While the person is in or on the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment.

(4) While the person is within 1,000 feet of the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment, if the person knows or should have known that he or she is within 1,000 feet of the premises of the facility or if the facility is readily recognizable as a facility that provides alcohol and other drug abuse treatment.

History: 1985 a. 328 1987 s. 332, 339, 403; 1989 a. 31, 107, 121; 1991 a. 39; 1993 a. 87, 98, 118, 281, 490, 491; 1995 a. 448 s. 289, 491; Stats. 1995s. 961.49; 1997 a. 283, 327; 1999 a. 32, 48, 57; 2001 a. 109.

Scienter is not an element of this section. *State v. Hennann*, 164 Wis. 2d 269, 474 N.W.2d 906 (Ct. App. 1991).

A university campus is not a "school" within the meaning of s. 161.49 [now 961.49]. *State v. Andrews*, 171 Wis. 2d 217, 491 N.W.2d 504 (Ct. App. 1992).

Anyone who passes within a zone listed in sub. (1) while in possession of a controlled substance with an intent to deliver it somewhere is subject to the penalty enhancer provided by this section whether or not the arrest is made within the zone and whether or not there is an intent to deliver the controlled substance within the zone. *State v. Rasmussen*, 195 Wis. 2d 109, 536 N.W.2d 106 (Ct. App. 1995).

School "premises" begin at the school property line. *State v. Hall*, 196 Wis. 2d 850, 540 N.W.2d 219 (Ct. App. 1995).

The penalty enhancer for sales close to parks does not violate due process and is not unconstitutionally vague. The ordinary meaning of "parks" includes undeveloped parks. Proximity to a park is rationally related to protecting public health and safety from drug sale activities. *State v. Lopez*, 207 Wis. 2d 415, 559 N.W.2d 264 (Ct. App. 1996).

Day care centers are a subset of "youth centers" as defined in s. 961.01 (22) and come within the definition of places listed in s. 961.49 (2). *State v. Van Riper*, 222 Wis. 2d 197, 586 N.W.2d 198 (Ct. App. 1998).

This section contains two elemental facts—a distance requirement and a particularized protected place both of which must be submitted to the jury and proven beyond a reasonable doubt. *State v. Harvey*, 2002 WI 93, 254 Wis. 2d 442, 647 N.W.2d 189.

961.495 Possession or attempted possession of a controlled substance on or near certain places.

If any person violates s. 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or II, a controlled substance analog of a controlled substance included in schedule I or II or ketamine or flunitrazepam while in or on the premises of a scattered-site public housing project, while in or on or otherwise within 1,000 feet of a state, county, city, village or town park, a jail or correctional facility, a multiunit public housing project, a swimming pool open to members of the public, a youth center or a community center, while in or on or otherwise within 1,000 feet of any private or public school premises or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall, in addition to any other penalties that may apply to the crime, impose 100 hours of community service work for a public agency or a nonprofit charitable organization. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this section has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.

History: 1989 a. 31, 121; 1991 a. 39; 1993 a. 87, 118, 281, 490; 1995 a. 448 s. 290; Stats. 1995s. 961.495; 1999 a. 57.

961.50 Suspension or revocation of operating privilege.

(1) If a person is convicted of any violation of this chapter, the court shall, in addition to any other penalties that may apply to the crime, suspend the person's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with the record of conviction and notice of the suspension. The person is eligible for an occupational license under s. 343.10 as follows:

(a) For the first such conviction, at any time.

(b) For a 2nd conviction within a 5-year period, after the first 60 days of the suspension or revocation period.

(c) For a 3rd or subsequent conviction within a 5-year period, after the first 90 days of the suspension or revocation period.

(2) For purposes of counting the number of convictions under sub. (1), convictions under the law of a federally recognized American Indian tribe or band in this state, federal law or the law of another jurisdiction, as defined in s. 343.32 (1m) (a), for any offense therein which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have required suspension or revocation of such person's operating privilege under this section, shall be counted and given the effect specified under sub. (1). The 5-year period under this section shall be measured from the dates of the violations which resulted in the convictions.

(3) If the person's license or operating privilege is currently suspended or revoked or the person does not currently possess a valid operator's license issued under ch. 343, the suspension or revocation under this section is effective on the date on which the person is first eligible and applies for issuance, renewal or reinstatement of an operator's license under ch. 343.

History: 1991 a. 39; 1993 a. 16, 480; 1995 a. 448 s. 291; Stats. 1995s. 961.50; 1997 a. 84.

A suspension imposed pursuant to this section is not a "presumptive minimum sentence" under s. 961.438. A minimum 6-month suspension is mandatory. *State v. Herman*, 2002 WI App 28, 250 Wis. 2d 166, 640 N.W.2d 539.

SUBCHAPTER V

ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

961.51 Powers of enforcement personnel. (1) Any officer or employee of the pharmacy examining board designated by the examining board may:

(a) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas and summonses issued under the authority of this state;

(b) Make arrests without warrant for any offense under this chapter committed in the officer's or employee's presence, or if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony; and

(c) Make seizures of property pursuant to this chapter.

(2) This section does not affect the responsibility of law enforcement officers and agencies to enforce this chapter, nor the authority granted the department of justice under s. 165.70.

History: 1971 c. 219; 1985 a. 29; 1993 a. 482; 1995 a. 448 s. 293; Stats. 1995 s. 961.51.

961.52 Administrative inspections and warrants.

(1) Issuance and execution of administrative inspection warrants shall be as follows:

(a) A judge of a court of record, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(b) A warrant shall issue only upon an affidavit of a designated officer or employee of the pharmacy examining board or the department of justice having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

1. State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

2. Be directed to a person authorized by law to execute it;

3. Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

4. Identify the item or types of property to be seized, if any;

5. Direct that it be served during normal business hours and designate the judge to whom it shall be returned.

(c) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if

present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(d) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of court for the county in which the inspection was made.

(2) The pharmacy examining board and the department of justice may make administrative inspections of controlled premises in accordance with the following provisions:

(a) For purposes of this section only, "controlled premises" means:

1. Places where persons authorized under s. 961.32 to possess controlled substances in this state are required by federal law to keep records; and

2. Places including factories, warehouses, establishments and conveyances in which persons authorized under s. 961.32 to possess controlled substances in this state are permitted by federal law to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance.

(b) When authorized by an administrative inspection warrant issued pursuant to sub. (1), an officer or employee designated by the pharmacy examining board or the department of justice, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(c) When authorized by an administrative inspection warrant, an officer or employee designated by the pharmacy examining board or the department of justice may:

1. Inspect and copy records relating to controlled substances;

2. Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in par. (e), all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this chapter; and

3. Inventory any stock of any controlled substance therein and obtain samples thereof.

(d) This section does not prevent entries and administrative inspections, including seizures of property, without a warrant:

1. If the owner, operator or agent in charge of the controlled premises consents;

2. In situations presenting imminent danger to health or safety;

3. In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

4. In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

5. In all other situations in which a warrant is not constitutionally required.

(e) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

History: 1971 c. 219; 1983 a. 538; 1985 a. 29; 1993 a. 482; 1995 a. 448 s. 294; Stats. 1995 s. 961.52.

961.53 Violations constituting public nuisance. Violations of this chapter constitute public nuisances under ch. 823, irrespective of any criminal prosecutions which may be or are commenced based on the same acts.

History: 1971 c. 219; Sup. Ct. Order. 67 Wis. 2d 585.775 (1975); 1995 a. 448 s. 295; Stats. 1995 s. 961.53.

961.54 Cooperative arrangements and confidentiality.

The department of justice shall cooperate with federal, state and local agencies in discharging its responsibilities concerning traffic

in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the bureau by establishing a centralized unit to accept, catalog, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under s. 961.335 (7); and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

History: 1971 c. 219,336; 1975 c. 110; 1995 a. 448 s. 296, Stats 1995 s. 961.54

961.55 Forfeitures. (1) The following are subject to forfeiture:

(a) All controlled substances or controlled substance analogs which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, distributing, importing or exporting any controlled substance or controlled substance analog in violation of this chapter.

(c) All property which is used, or intended for use, as a container for property described in pars. (a) and (b).

(d) All vehicles which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in pars. (a) and (b) or for the purpose of transporting any property or weapon used or to be used or received in the commission of any felony under this chapter, but:

1. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the vehicle is a consenting party or privy to a violation of this chapter;

2. No vehicle is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent. This subdivision does not apply to any vehicle owned by a person who is under 16 years of age on the date that the vehicle is used, or is intended for use, in the manner described under par. (d) (intro.), unless the court determines that the owner is an innocent bona fide owner;

3. A vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b), (c), (d), (e) or (f); and

4. If forfeiture of a vehicle encumbered by a bona fide perfected security interest occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of the commission of the felony which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

(e) All books, records, and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of this chapter.

(f) All property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime under this chapter.

(g) Any drug paraphernalia, as defined in s. 961.571, used in violation of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any officer or employee designated in s. 961.51 (1) or

(2) or a law enforcement officer upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) The officer or employee or a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The officer or employee or a law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter, that the property was derived from or realized through a crime under this chapter or that the property is a vehicle which was used as described in sub. (1) (d).

(3) In the event of seizure under sub. (2), proceedings under sub. (4) shall be instituted promptly. All dispositions and forfeitures under this section and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent persons under sub. (1) (d) 1., 2. and 4. Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

(4) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the person seizing the property may:

(a) Place the property under seal;

(b) Remove the property to a place designated by it; or

(c) Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) When property is forfeited under this chapter, the agency whose officer or employee seized the property may:

(a) Retain it for official use;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use 50% of the amount received for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs and the costs of investigation and prosecution reasonably incurred. The remainder shall be deposited in the school fund as proceeds of the forfeiture. If the property forfeited is money, all the money shall be deposited in the school fund;

(c) Require the sheriff of the county in which the property was seized to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the bureau for disposition.

(6) Controlled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that are possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Con-

trolled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(6m) Flunitrazepam or ketamine that is possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter is contraband and shall be seized and summarily forfeited to the state. Flunitrazepam or ketamine that is seized or comes into the possession of the state, the owner of which is unknown, is contraband and shall be summarily forfeited to the state.

(7) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(8) The failure, upon demand by any officer or employee designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate federal registration, or proof that the person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 s. 307; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109.

A vehicle obtained out of state and used to transport a controlled substance is subject to forfeiture under sub. (1) (d). State v. S & S Meats, Inc. 92 Wis. 2d 64, 284 N.W.2d 712 (Ct. App. 1979).

A vehicle subject to sub. (1) (d) 4 is not subject to forfeiture unless the secured party consents. State v. Fouse, 120 Wis. 2d 471, 355 N.W.2d 366 (Ct. App. 1984).

Under sub. (1) (f), the state may seize property from an owner not charged with a crime. State v. Hooper, 122 Wis. 2d 748, 364 N.W.2d 175 (Ct. App. 1985).

The "seized but not forfeited" language of s. 961.55 (3) means that the portion of that subsection related to return of property is only triggered by an unsuccessful forfeiture action brought by the state; in the event that the district attorney elects not to bring a forfeiture action, a person seeking the return of seized property may do so under s. 968.20. Jones v. State, 226 Wis. 2d 565, 594 N.W.2d 738 (1999).

961.555 Forfeiture proceedings. (1) TYPE OF ACTION; WHERE BROUGHT. In an action brought to cause the forfeiture of any property seized under s. 961.55, the court may render a judgment in rem or against a party personally, or both. The circuit court for the county in which the property was seized shall have jurisdiction over any proceedings regarding the property when the action is commenced in state court. Any property seized may be the subject of a federal forfeiture action.

(2) COMMENCEMENT. (a) The district attorney of the county within which the property was seized shall commence the forfeiture action within 30 days after the seizure of the property, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property. The request shall be granted. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

(b) Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties.

(c) In counties having a population of 500,000 or more, the district attorney or corporation counsel may proceed under par. (a).

(d) If no answer is served or no issue of law or fact has been joined and the time for that service or joining issue has expired, or if any defendant fails to appear at trial after answering or joining issue, the court may render a default judgment as provided in s. 806.02.

(3) BURDEN OF PROOF. The state shall have the burden of satisfying or convincing to a reasonable certainty by the greater weight

of the credible evidence that the property is subject to forfeiture under s. 961.55.

(4) ACTION AGAINST OTHER PROPERTY OF THE PERSON. The court may order the forfeiture of any other property of a defendant up to the value of property found by the court to be subject to forfeiture under s. 961.55 if the property subject to forfeiture meets any of the following conditions:

(a) Cannot be located.

(b) Has been transferred or conveyed to, sold to or deposited with a 3rd party.

(c) Is beyond the jurisdiction of the court.

(d) Has been substantially diminished in value while not in the actual physical custody of the law enforcement agency.

(e) Has been commingled with other property that cannot be divided without difficulty.

History: 1971 c. 219; Sup. Ct. Order, 67 Wis. 2d 585, 752 (1975); 1981 c. 113, 267; Sup. Ct. Order, 120 Wis. 2d xiii; 1985 a. 245; 1989 a. 121; 1993 a. 321; 1995 a. 448 s. 306; Stats. 1995 s. 961.555; 1997 a. 187.

Judicial Council Committee Note, 1974: The district attorney would be required to file within the 15 [now 30] day period. The answer need not be verified. [Re Order effective Jan. 1, 1976]

Judicial Council Note, 1984: Sub. (2) (a) has been amended by allowing 60 days after the action is commenced for service of the summons, complaint and affidavit on the defendants. The prior statute, requiring service within 30 days after seizure of the property, was an exception to the ~~general~~ rule of s. 801.02 (2), stats. [Re Order effective Jan. 1, 1985]

The time provisions of sub. (2) are mandatory and jurisdictional. State v. Rosen, 72 Wis. 2d 200, 240 N.W.2d 168 (1976).

Persons served under sub. (2) (a) must be named as defendants. An action cannot be brought against an inanimate object as a sole "defendant." State v. One 1973 Cadillac, 95 Wis. 2d 641, 291 N.W.2d 626 (Ct. App. 1980).

An affidavit under sub. (2) (a) must be executed by a person who was present at the seizure or who ordered the seizure and received reports from those present at the seizure. State v. Hooper, 122 Wis. 2d 748, 364 N.W.2d 175 (Ct. App. 1985).

Sub. (2) (b) requires a hearing be held, not set, within 60 days of the service of the answer and allows a continuance only when it is applied for within the 60 day period. State v. Baye, 191 Wis. 2d 334, 528 N.W.2d 81 (Ct. App. 1995).

961.56 Burden of proof; liabilities. (1) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate federal registration or order form, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(3) No liability is imposed by this chapter upon any authorized state, county or municipal officer or employee engaged in the lawful performance of the officer's or employee's duties.

History: 1971 c. 219, 307; 1993 a. 482; 1995 a. 448 s. 307; Stats. 1995 s. 961.56.

961.565 Enforcement reports. On or before November 15 annually, the governor and the attorney general shall submit a joint report to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) describing the activities in this state during the previous year to enforce the laws regulating controlled substances. The report shall contain recommendations for improving the effectiveness of enforcement activities and other efforts to combat the abuse of controlled substances.

History: 1989 a. 122; 1995 a. 448 s. 308; Stats. 1995 s. 961.565.

SUBCHAPTER VI

DRUG PARAPHERNALIA

961.571 Definitions. In this subchapter:

(1) (a) "Drug paraphernalia" means all equipment, products and materials of any kind that are used, designed for use or primarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackag-

ing, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of this chapter. "Drug paraphernalia" includes, but is not limited to, any of the following:

1. Kits used, designed for use or primarily intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant that is a controlled substance or from which a controlled substance or controlled substance analog can be derived.

2. Kits used, designed for use or primarily intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs.

3. Isomerization devices used, designed for use or primarily intended for use in increasing the potency of any species of plant that is a controlled substance.

4. Testing equipment used, designed for use or primarily intended for use in identifying, or in analyzing the strength, effectiveness or purity of, controlled substances or controlled substance analogs.

5. Scales and balances used, designed for use or primarily intended for use in weighing or measuring controlled substances or controlled substance analogs.

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, designed for use or primarily intended for use in cutting controlled substances or controlled substance analogs.

7. Separation gins and sifters used, designed for use or primarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

8. Blenders, bowls, containers, spoons and mixing devices used, designed for use or primarily intended for use in compounding controlled substances or controlled substance analogs.

9. Capsules, balloons, envelopes and other containers used, designed for use or primarily intended for use in packaging small quantities of controlled substances or controlled substance analogs.

10. Containers and other objects used, designed for use or primarily intended for use in storing or concealing controlled substances or controlled substance analogs.

11. Objects used, designed for use or primarily intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.

b. Water pipes.

c. Carburetion tubes and devices.

d. Smoking and carburetion masks.

e. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.

f. Miniature cocaine spoons and cocaine vials.

g. Chamber pipes.

h. Carburetor pipes.

i. Electric pipes.

j. Air-driven pipes.

k. Chilams.

L. Bongs.

m. Ice pipes or chillers.

(b) "Drug paraphernalia" excludes:

1. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body.

2. Any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products.

(2) "Primarily" means chiefly or mainly.

History: 1989a. 121; 1991a. 140; 1995a. 448 s. 310; Stats. 1995 s. 961.571.

A tobacco pipe is excluded from the definition of drug paraphernalia under sub. (1) (b) 2. The presence of residue of a controlled substance in the pipe does not change that result. State v. Martinez, 210 Wis. 2d 397, 563 N.W.2d 922 (Ct. App. 1997).

961.572 Determination. (1) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other legally relevant factors, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use.

(b) The proximity of the object, in time and space, to a direct violation of this chapter.

(c) The proximity of the object to controlled substances or controlled substance analogs.

(d) The existence of any residue of controlled substances or controlled substance analogs on the object.

(e) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is designed for use or primarily intended for use as drug paraphernalia.

(f) Instructions, oral or written, provided with the object concerning its use.

(g) Descriptive materials accompanying the object that explain or depict its use.

(h) Local advertising concerning its use.

(i) The manner in which the object is displayed for sale.

(j) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(k) The existence and scope of legitimate uses for the object in the community.

(L) Expert testimony concerning its use.

(2) In determining under this subchapter whether an item is designed for a particular use, a court or other authority shall consider the objective physical characteristics and design features of the item.

(3) In determining under this subchapter whether an item is primarily intended for a particular use, a court or other authority shall consider the subjective intent of the defendant.

History: 1989a. 121; 1991a. 140; 1995a. 448 s. 311; Stats. 1995 s. 961.572

961.573 Possession of drug paraphernalia. (1) No person may use, or possess with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) No person may use, or possess with the primary intent to use, drug paraphernalia to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine.

amine in violation of this chapter. Any person who violates this subsection is guilty of a Class H felony.

History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 312 to 314, 492; Stats. 1995 s. 961.573; 1999 a. 129; 2001 a. 109.

961.574 Manufacture or delivery of drug paraphernalia.

(1) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not **more** than \$1,000 or imprisoned for not more than **90** days or both.

(2) Any person who violates sub. **(1)** who is under **17** years of age is subject to a disposition under s. **938.344 (2e)**.

(3) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter. Any person who violates this subsection is guilty of a Class H felony.

History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 315 to 317, 493; Stats. 1995 s. 961.574; 1999 a. 129; 2001 a. 109.

961.575 Delivery of drug paraphernalia to a minor.

(1) Any person **17** years of age or over who violates s. **961.574 (1)** by delivering drug paraphernalia to a person **17** years of age or under who is at least **3** years younger than the violator may be fined not more than **\$10,000** or imprisoned for not more than **9** months or both.

(2) Any person who violates this section who is under **17** years of age is subject to a disposition under s. **938.344 (2e)**.

(3) Any person **17** years of age or over who violates s. **961.574 (3)** by delivering drug paraphernalia to a person **17** years of age or under is guilty of a Class G felony.

History: 1989 a. 121; 1991 a. 39; 1995 a. 27, 77; 1995 a. 448 ss. 318, 494; Stats. 1995 s. 961.575; 1999 a. 129; 2001 a. 109.

961.576 Advertisement of drug paraphernalia.

No person may place in any newspaper, magazine, handbill or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed for use or primarily intended for use as drug paraphernalia in violation of this chapter. Any person who violates this section may be fined not more than \$500 or imprisoned for not more than **30** days or both.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 319; Stats. 1995 s. 961.576.

961.577 Municipal ordinances. Nothing in this subchapter precludes a city, village or town from prohibiting conduct that is the same as that prohibited by s. **961.573 (2)**, **961.574 (2)** or **961.575 (2)**.

History: 1989 a. 121; 1995 a. 448 s. 320; Stats. 1995 s. 961.577.

SUBCHAPTER VII

MISCELLANEOUS

961.61 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: 1971 c. 219; 1995 a. 448 s. 322; Stats. 1995 s. 961.61.

961.62 Short title. This chapter may be cited as the “Uniform Controlled Substances Act”.

History: 1971 c. 219; 1995 a. 448 s. 323; Stats. 1995 s. 961.62.

Chapter Pod 1

LICENSE TO PRACTICE PODIATRIC MEDICINE AND SURGERY

Pod 1.01	Authority and purpose.
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Pod 1.05	Application deadline and fees.
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Pod 1.01 Authority and purpose. Chapters Pod 1 to 6 are adopted by the podiatrists affiliated credentialing board under ss. 15.085 (5) (b), 227.11 (2) and 448.695, Stats., and govern the practice of podiatric medicine and surgery under subch. IV of ch. 448, stats.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 1.02 Definitions. As used in chs. Pod 1 to 6:

(1) “Board” means the podiatrists affiliated credentialing board.

(2) “Controlled substance” has the meaning under s. 961.01 (4), stats.

(3) “License” means any license issued by the board.

(4) “Licensee” means any person validly possessing any license granted and issued to that person by the board.

(5) “Patient” means a person who receives health care services from a podiatrist.

(6) “Patient health care record” has the meaning given in s. 146.81 (4), Stats.

(7) “Practitioner” means a person holding a license to practice podiatric medicine and surgery.

(8) “Prescription drug” has the meaning under s. 450.01 (20), Stats.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00; correction in (2) made under s. 13.93 (2m) (b) 7, Stats.

Pod 1.03 Application and credentials. Every person applying for a license to practice podiatric medicine and surgery shall make application on forms provided by the board and shall submit all of the following:

(1) A completed and verified application form.

(2) Verified documentary evidence of graduation from a school of podiatric medicine and surgery approved by the board and a verified photographic copy of the diploma conferring the degree of doctor of podiatric medicine or its equivalent as determined by the board granted to the applicant by the school. The board shall approve the podiatric medical schools recognized and approved at the time of the applicant’s graduation by the council on education of the American podiatric association.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 1.04 Translation of documents. If any of the documents required under this chapter are in a language other than English, the applicant shall also submit a verified English translation and the cost of translation shall be borne by the applicant.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 1.05 Application deadline and fees. The completed application and all required documents shall be received by the board at its offices not less than 30 days prior to the date of examination. The required fees under s. 440.05 (1), Stats., shall accompany the application.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 1.06 Examinations. (1)(a) An applicant shall complete the written examination under sub. (2), and an open book examination on statutes and rules governing the practice of podiatric medicine and surgery in Wisconsin. In addition, an applicant may be required to complete an oral examination if the applicant:

1. Has a medical condition which in any way impairs or limits the applicant’s ability to practice podiatric medicine and surgery with reasonable skill and safety.

2. Uses chemical substances so as to impair in any way the applicant’s ability to practice podiatric medicine and surgery with reasonable skill and safety.

3. Has been disciplined or had licensure denied by a licensing or regulatory authority in Wisconsin or another jurisdiction.

4. Has been found negligent in the practice of podiatric medicine or has been a party in a lawsuit in which it was alleged that the applicant had been negligent in the practice of podiatric medicine.

5. Has been convicted of a crime the circumstances of which substantially relate to the practice of podiatric medicine.

6. Has lost, had reduced or had suspended his or her hospital staff privileges, or has failed to continuously maintain hospital privileges during the applicant’s period of licensure following postgraduate training.

7. Has been graduated from a school of podiatric medicine not approved by the board.

8. Has been diagnosed as suffering from pedophilia, exhibitionism or voyeurism.

9. Has within the past 2 years engaged in the illegal use of controlled substances.

10. Has been subject to adverse formal action during the course of medical education, postgraduate training, hospital practice, or other medical employment.

11. Has not practiced podiatric medicine and surgery for a period of 6 months prior to application, unless the applicant has been graduated from a school of podiatric medicine within that period.

(b) An application filed under s. Pod 1.03 shall be reviewed by an application review panel of at least 2 board members designated by the chairperson of the board. The panel shall determine whether the applicant is eligible for a license without completing an oral examination.

(c) All examinations shall be conducted in the English language. Each examination is scored separately, and the applicant shall achieve passing scores on each examination to qualify for a license.

(2) The board shall utilize as its written examinations the national board examination, part I and part II, and the PMLexis examination of the national board of podiatric examiners. The passing scores are set by the national board of podiatric medicine and represent the minimum competency required to protect public

health and safety. The board may accept the recommendations of the examination provider.

(3) The board may deny release of scores or issuance of a credential if the board determines that the applicant violated rules of conduct of the examination or otherwise acted dishonestly in the examination process.

(4) An applicant who has received passing grades in written examinations for a license to practice podiatry conducted by another licensing jurisdiction of the United States, shall submit to the board documentary evidence. The board shall review the documentary evidence to determine whether the scope and passing grades of the examinations are substantially equivalent to those of this state at the time of the applicant's examination. If the board finds equivalency, the board shall accept this in lieu of requiring the applicant to achieve passing grades in the national board examination and the PMLexis examination of the national board of podiatry examiners. The burden of proof of equivalency is on the applicant.

(5) The oral examination of each applicant is conducted by members of the board and is scored as pass or fail.

(6) The board shall notify each applicant found eligible for examination of the time and place scheduled for that applicant's oral examination. Unless prior scheduling arrangements have been made with the board by the applicant, failure of an applicant to appear for examination as scheduled shall void that applicant's application and require the applicant to reapply for licensure.

(7) Any applicant who is a graduate of a school of podiatric medicine and surgery in which English is not the primary language of communication shall be examined by the board on his or her proficiency in the English language.

(8) Otherwise qualified applicants with disabilities, as defined by the Americans with disabilities act, shall be provided with reasonable accommodations.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 1.07 Failure and reexamination. An applicant who fails to achieve a passing grade in the examinations required under this chapter may apply for reexamination. An applicant who fails to achieve a passing grade in the examinations required under this chapter may be reexamined twice at not less than 4 month intervals. If the applicant fails to achieve a passing grade on the second reexamination, the applicant shall not be admitted to further examination until he or she reapplies for licensure and also presents to the board evidence of further professional training or education as the board may deem appropriate in each applicant's particular case.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 1.08 Temporary educational license. (1) An applicant who has been appointed to a postgraduate training program in a facility in this state approved by the board may apply to the board for a temporary educational license to practice podiatric medicine and surgery and shall submit to the board all of the following:

(a) A completed and verified application form provided by the board.

Note: Applications are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(b) The documentary evidence and credentials required under ss. Pod 1.04, 1.05 and 1.06.

(c) The required fees under s. 440.05 (1), Stats.

(2) An applicant shall complete an open book examination on statutes and rules governing the practice of podiatric medicine and surgery in Wisconsin.

(3) The holder of a temporary educational license to practice podiatric medicine and surgery may, under the direction of a person licensed to practice podiatric medicine and surgery in this state, perform services requisite to the training program in which that holder is serving. Acting under such direction, the holder of

a temporary educational license shall also have the right to prescribe drugs other than controlled substances and to sign any certificates: reports or other papers for the use of public authorities which are required of or permitted to persons licensed to practice podiatric medicine and surgery. The holder of a temporary educational license shall confine his or her entire practice to the facility in which he or she is taking the training.

(4) Violation by the holder of a temporary educational license to practice podiatric medicine and surgery of any of the provisions of chs. Pod 1 to 6 or of subch. IV of ch. 448, Stats., which apply to persons licensed to practice podiatric medicine and surgery, shall be cause for the revocation of the temporary educational license.

(5) Temporary educational licenses granted under this chapter shall expire one year from date of issuance.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 1.09 Locum tenens license. (1) An applicant who holds a valid license to practice podiatric medicine and surgery issued by another licensing jurisdiction of the United States may apply to the board for a locum tenens license to practice podiatric medicine and surgery and shall submit to the board all of the following:

(a) A completed and verified application form provided by the board.

Note: Applications are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(b) A letter from a podiatrist licensed to practice podiatric medicine and surgery in this state requesting the applicant's services.

(c) A verified photostatic copy of a license to practice podiatric medicine and surgery issued by another licensing jurisdiction of the United States to the applicant.

(d) The required fees under s. 440.05(1), Stats.

(2) An applicant shall complete an open book examination on statutes and rules governing the practice of podiatric medicine and surgery in Wisconsin.

(3) The application and documentary evidence submitted by the applicant shall be reviewed by the board, acting through a designated member of the board and, upon the finding of the member that the applicant is qualified, the board, acting through the designated member, shall issue a locum tenens license to practice podiatric medicine and surgery to the applicant.

(4) The holder of a locum tenens license to practice podiatric medicine and surgery shall practice podiatric medicine and surgery as defined in s. 448.60 (4), Stats., providing the practice is confined to the geographical area for which the license is issued.

(5) A locum tenens license to practice podiatric medicine and surgery shall expire 90 days from the date of its issuance. For cause shown to its satisfaction, the board, acting through its designated member, may renew the locum tenens license for additional periods of 90 days each, but no license may be renewed more than 3 consecutive times.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00; correction in (4) made under s. 13.93(2m) (b) 7., Stats.

Pod 1.10 Temporary license. (1) (a) An applicant for a license to practice podiatric medicine and surgery who is a graduate of a school of podiatric medicine and surgery approved by the board may apply to the board for a temporary license to practice podiatric medicine and surgery. An applicant for a temporary license shall submit to the board the documentary evidence and credentials required under ss. Pod 1.04 and 1.05, a completed application for a temporary license, and the required fees under s. 440.05 (1), Stats. An application for a temporary license shall be made not less than 30 days before the date set by the board for the holding of its next examinations for licensure.

(b) The application and information submitted under par. (a), shall be reviewed by the board through a designated member. The

board, acting through the designated member, shall issue a temporary license to practice podiatric medicine and surgery if the applications and information submitted under par. (a) are satisfactory.

Note: Applications are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) (a) A temporary license to practice podiatric medicine and surgery granted under this section expires on the earliest of the following dates:

1. Sixty days after the next examination for a license is given by the board if the temporary licensee submits to the examination.

2. The first day the board begins its examination of applicants for a license to practice podiatric medicine and surgery after the temporary license is issued, if the temporary licensee does not submit to the examination on that date.

3. The date following the examination on which the board grants or denies the temporary licensee a license to practice podiatric medicine and surgery.

(b) A license to practice podiatric medicine and surgery is deemed denied by the board under par. (a) 3., on the date the applicant is notified that he or she has failed the examination for a license to practice podiatric medicine and surgery.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 1.11 Examination review by applicant. (1) An applicant who fails the oral examination or statutes and rules examination may request a review of that examination by filing a written request and the required fee under s. 440.05 (1), Stats., with the board within 30 days of the date on which examination results were mailed.

(2) Examination reviews are by appointment only.

(3) An applicant shall review the statutes and rules examination for not more than one hour.

(4) An applicant shall review the oral examination for not more than 2 hours.

(5) An applicant shall not be accompanied during the review by any person other than the proctor.

(6) At the beginning of the review, the applicant shall be provided with a copy of the questions, a copy of the applicant's answer sheet or oral tape and a copy of the master answer sheet.

(7) An applicant shall review the examination in the presence of a proctor. The applicant shall be provided with a form on which to write comments, questions or claims of error regarding any items in the examination. Bound reference books shall be permitted. An applicant shall not remove any notes from the area. Notes shall be retained by the proctor and made available to the applicant for use at a hearing, if desired. The proctor shall not defend the examination or attempt to refute claims of error during the review.

(8) An applicant shall not review the examination more than once.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 1.12 Board review of examination error claim.

(1) An applicant claiming examination error shall file a written request for board review in the board office within 30 days of the date the examination was reviewed. The request shall include all of the following:

(a) The applicant's name and address.

(b) The type of license for which the applicant applied.

(c) A description of the mistakes the applicant believes were made in the examination content, procedures, or scoring, including the specifics or procedures claimed to be in error.

(d) The facts which the applicant intends to prove, including reference text citations or other supporting evidence for the applicant's claim.

(2) The board shall review the claim, make a determination of the validity of the objections and notify the applicant in writing of the board's decision and any resulting grade changes.

(3) If the board confirms the failing status following its review, the application shall be deemed incomplete and the board shall issue a notice of denial.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Chapter Pod 2

UNPROFESSIONAL CONDUCT

Pod 2.01 Definition.

Pod 2.01 Definition. The term “unprofessional conduct” is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(1) Violating or attempting to violate any provision or term of subch. IV of ch. 448, Stats., or of any valid rule of the board.

(2) Violating or attempting to violate any term, provision, or condition of any order of the board.

(3) Knowingly making or presenting or causing to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing in connection with any application for a license.

(4) Practicing fraud, forgery, deception, collusion, or conspiracy in connection with any examination for a license.

(5) Engaging or attempting to engage in practice under any license under any given name or surname other than that under which originally licensed or registered to practice in this or any other state. This subsection does not apply to change of name resulting from marriage, divorce, or order by a court of record.

(6) Engaging or attempting to engage in the unlawful practice of podiatric medicine and surgery or treating the sick.

(7) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of a patient or the public.

(8) Practicing or attempting to practice under any license when unable to do so with reasonable skill and safety to patients.

(9) Practicing or attempting to practice under any license beyond the scope of that license.

(10) Offering, undertaking, or agreeing to treat or cure a disease or condition by a secret means, method, device, or instrumentality; or refusing to divulge to the board upon demand the means, method, device, or instrumentality used in the treatment of a disease or condition.

(11) Representing that a manifestly incurable disease or condition can be or will be permanently cured; or that a curable disease or condition can be cured within a stated time, if such is not the fact.

(12) Knowingly making any false statement, written or oral, in practicing under any license, with fraudulent intent; or obtaining or attempting to obtain any professional fee or Compensation of any form by fraud or deceit.

(13) Willfully divulging a privileged communication or confidence entrusted by a patient or deficiencies in the character of patients observed in the course of professional attendance, unless lawfully required to do so.

(14) Engaging in uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances,

are vulnerable to undue influence, or engaging in false, misleading or deceptive advertising.

(15) Administering, dispensing, prescribing, supplying, or obtaining controlled substances as defined in s. 961.01 (4), Stats., other than in the course of legitimate professional practice, or as otherwise prohibited by law.

(16) Having a license, certificate, permit, registration, or other practice credential granted by another state or by any agency of the federal government to practice medicine and surgery, which becomes limited, restricted, suspended, or revoked, or having been subject to other adverse action by the state licensing authority or by any agency of the federal government, including but not limited to the denial or limitation of an original credential, or the surrender of a credential, whether or not accompanied by findings of negligence or unprofessional conduct.

(17) Conviction of any crime which may relate to practice under any license, or of violation of any federal or state law regulating the possession, distribution, or use of controlled substances as defined in s. 961.01 (4), Stats. A certified copy of a judgment of a court of record showing such conviction, within this state or without, shall be presumptive evidence thereof.

(18) Prescribing, ordering, dispensing, administering, supplying, selling, or giving any amphetamine, sympathomimetic amine drug or compound designated as a schedule II controlled substance pursuant to the provisions of s. 961.16 (5), Stats., to or for any person except for use as an adjunct to opioid analgesic compounds for treatment of cancer-related pain.

(19) Aiding or abetting the unlicensed practice of podiatric medicine or representing that unlicensed persons practicing under supervision are licensed.

(20) Failure of a licensee whose principal place of practice is in this state to submit to the board on or before June 30 of each year evidence that the podiatrist has in effect malpractice liability insurance coverage in the amount of at least \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(21) Using in advertising the term “board certified” or a similar phrase of like meaning by a licensee unless certified by the council on podiatric medicine of the American podiatric medical association and unless disclosure is made in the advertising of the complete name of the board which conferred the certification.

(22) Violating or aiding and abetting the violation of any law or administrative rule or regulation, the circumstances of which substantially relate to the circumstances of the practice of podiatric medicine and surgery.

(23) Failure by a licensee to maintain patient health care records consistent with the requirements of ch. Pod 6.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Chapter Pod 3

CONTINUING PODIATRIC MEDICAL EDUCATION

Pod 3.01 Continuing podiatric medical education required; waiver.
Pod 3.02 Acceptable continuing medical educational programs.

Pod 3.03 Evidence of compliance.
Pod 3.04 Audit.

Pod 3.01 Continuing podiatric medical education required; waiver. (1) Each podiatrist required to complete the biennial training requirement under s. 448.665, Stats., shall, in each second year at the time of making application for a certificate of registration as required under s. 448.665, Stats., sign a statement on the application for registration certifying that the podiatrist has completed at least 50 hours of acceptable continuing educational programs relevant to the practice of podiatric medicine within the 2 calendar years immediately preceding the calendar year for which application for registration is made.

(2) A licensee may apply to the board for waiver of the requirements of this chapter on grounds of prolonged illness or disability or other similar circumstances, and each case shall be individually considered on its merits by the board.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00, correction in (1) made under s. 13.93 (2m) (b) 7., Stats.

Pod 3.02 Acceptable continuing medical educational programs. (1) In satisfaction of the biennial training requirement under s. 448.665, Stats., the board shall accept an educational program approved at the time of the podiatrist's attendance by any of the following:

(a) The council on podiatric medical education of the American podiatric medical association.

(b) The council on medical education of the American medical association.

(c) The council on medical education of the American osteopathic association.

(d) The accreditation council for continuing medical education.

(2) An educational program provided outside the United States may be used for continuing education credit if the program is approved by the board.

(3) One hour of attendance by a podiatrist at a continuing education program is the equivalent of one hour of continuing podiatric medical education for purposes of s. Pod 3.01 (1).

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00; correction in (1) (intro.) made under s. 13.93 (2m) (b) 7., Stats.

Pod 3.03 Evidence of compliance. (1) Certification by the providing organization or by one of the approved accrediting bodies of attendance at and completion of continuing medical education programs approved under s. Pod 3.01 is satisfactory evidence for purposes of sub. (2) and s. Pod 3.03.

(2) Evidence of compliance shall be retained by each podiatrist through the biennium for which 50 hours of credit are required for registration.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 3.04 Audit. The board may require any podiatrist to submit evidence to the board of his or her compliance with continuing education requirements during the preceding biennium.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Chapter Pod 4

BIENNIAL REGISTRATION

Pod 4.01 Registration required; method of registration.
Pod 4.02 Registration prohibited, annulled; reregistration.

Pod 4.03 Failure to be registered.

Pod 4.01 Registration required; method of registration. Each licensee shall register biennially with the board. Prior to November 1 of each odd-numbered year the department shall mail to each licensee at his or her last known address an application form for registration. Each licensee shall complete the application form and return it with the required fee prior to November 1 of that year. The board shall notify the licensee within 30 business days of receipt of a completed registration form whether the application for registration is approved or denied.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 4.02 Registration prohibited, annulled; reregistration. Any podiatrist required to comply with the provisions of s. 448.665, Stats., and of ch. Pod 3, and who has not so complied, shall not be permitted to register. Any person whose license has been suspended or revoked shall not be permitted to register, and the registration of any person shall be automatically annulled upon the effective date of the board's order suspending or revoking the license. A person whose license has been suspended or revoked and subsequently restored shall be reregistered by the board upon receipt by the board of a completed registration form.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 4.03 Failure to be registered. (1) A licensee who fails for whatever reason to be registered as required under this chapter shall not exercise the rights or privileges conferred by any license granted by the board.

(2) Failure to renew a license by November 1 of odd-numbered years shall cause the license to lapse. A licensee who allows the license to lapse may apply to the board for reinstatement of the license as follows:

(a) If the licensee applies for renewal of the license less than 5 years after its expiration, the license shall be renewed upon payment of the renewal fee and fulfillment of the continuing education requirements.

(b) If the licensee applies for renewal of the license more than 5 years after its expiration, the board shall make an inquiry to determine whether the applicant is competent to practice under the license in this state, and shall impose any reasonable conditions on reinstatement of the license, including oral examination, as the board deems appropriate. **All** applicants under this paragraph shall be required to pass the open book examination on statutes and rules, which is the same examination given to initial applicants.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Chapter Pod 5

STANDARDS FOR DISPENSING AND PRESCRIBING DRUGS

Pod 5.01 Packaging.
Pod 5.02 Labeling.

Pod 5.03 Recordkeeping.
Pod 5.04 Prescription orders by nurses and ancillary health care personnel.

Pod 5.01 Packaging. A prescription drug dispensed by a practitioner shall be dispensed in a child-resistant container if it is a substance requiring special packaging under 16CFR 1700.14 (1982) of the federal regulations for the federal poison packaging act of 1970.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 5.02 Labeling. (1) A prescription drug dispensed by a practitioner shall contain a legible label affixed to the immediate container disclosing all of the following:

- (a) The name and address of the facility from which the prescribed drug is dispensed.
- (b) The date on which the prescription is dispensed.
- (c) The name of the practitioner who prescribed the drug or device.
- (d) The full name of the patient.
- (e) The generic name and strength of the prescription drug dispensed unless the prescribing practitioner requests omission of the name and strength of the drug dispensed.
- (f) Directions for use of the prescribed drug and cautionary statements, if any, contained in the prescription or required by law.

(2) The labeling requirement in sub. (1) does not apply to complimentary samples dispensed by a practitioner in original containers or packaging supplied to the practitioner by a pharmaceutical manufacturer or distributor.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 5.03 Recordkeeping. (1) **PRESCRIPTION DRUGS.** (a) A practitioner shall maintain complete and accurate records of

each prescription drug received, dispensed or disposed of in any other manner.

(2) **CONTROLLED SUBSTANCES.** (a) Records required by the federal controlled substances act and ch. 961, Stats., shall be maintained at the location where the drug is received, distributed or dispensed and be available for inspection by authorized persons for at least 5 years from the date of the record.

(b) Controlled substances dispensed by a practitioner shall be recorded on a separate log, in a separate bound log book in which each schedule of controlled substances dispensed is recorded separately and in chronological order with the following information:

1. The name of the substance.
2. Dosage form and strength of the substance.
3. Name and address of the person for whom dispensed.
4. Date of dispensing.
5. Quantity dispensed.
6. Name or initials of practitioner who dispensed the substance.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Pod 5.04 Prescription orders by nurses and ancillary health care personnel. Prescription orders prepared by professional nurses and ancillary health care personnel, as delegated and supervised by a practitioner under s. 448.62 (2), Stats., shall contain, in addition to other information required by this chapter, the name, address and telephone number of the delegating practitioner and the name, address and signature of the person preparing the prescription order.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Chapter Pod 6

PATIENT HEALTH CARE RECORDS

Pod 6.01 Minimum standards for patient health care records.

Pod 6.01 Minimum standards for patient health care records. (1) A podiatrist shall maintain patient health care records on every patient for a period of not less than 5 years after the ~~date~~ of the last entry, or for a longer period as may be otherwise required by law.

(2) A patient health care record shall contain all of the following clinical health care information which applies to the patient's medical condition:

- (a) Pertinent patient history.
- (b) Pertinent objective findings related to examination and test results.
- (c) Assessment or diagnosis.
- (d) Plan of treatment for the patient.
- (3) Each patient health care record entry shall be dated, shall identify the podiatrist, and shall be sufficiently legible to allow interventions by other health care practitioners.

History: Cr. Register, January, 2000, No. 529, eff. 2-1-00.

Chapter Phar 7

PHARMACY PRACTICE

Phar 7.01	Minimum procedures for compounding and dispensing.
Phar 7.015	Pharmacy technicians.
Phar 7.02	Prescription label; name of drug or drug product dispensed.
Phar 7.03	Prescription renewal limitations.
Phar 7.04	Return or exchange of health items.
Phar 7.05	Prescription records.

Phar 7.065	Answering machines in pharmacies.
Phar 7.07	Medication profile record system.
Phar 7.08	Prescription orders transmitted electronically.
Phar 7.09	Automated dispensing systems.
Phar 7.10	Administration of drug products and devices other than vaccines

Phar 7.01 Minimum procedures for compounding and dispensing. (1) Except as provided in sub. (4), a pharmacist or pharmacist-intern who compounds or dispenses according to a prescription order shall follow the procedures described in this rule and other applicable procedures. The pharmacist or pharmacist-intern as directed and supervised by a pharmacist shall:

(a) Receive electronic or oral prescription orders of a prescriber, review all original and renewal prescription orders, whether electronic, written or oral, and determine therapeutic compatibility and legality of the prescription order. The review shall include, when indicated or appropriate, consultation with the prescriber.

(b) Read and interpret a prescriber's directions for use for the purpose of accurately transferring the instructions to the prescription label.

(c) Select, compound, mix, combine, measure, count and otherwise prepare drugs needed to dispense a prescription except that an agent of the pharmacist may procure, measure or count prefabricated dosage forms if a pharmacist verifies accuracy of the agent's action.

(d) Make a final check on the accuracy and correctness of the prescription. For all original and renewed prescriptions, the prescription order record shall identify the pharmacist responsible for the prescription.

(e) Give the patient or agent appropriate consultation relative to the prescription except that prescriptions may be delivered by an agent of the pharmacist to a patient's residence if the delivery is accompanied by appropriate directions and an indication that consultation is available by contacting the pharmacist. The consultation requirement applies to original and renewal prescription orders and, except when prescriptions are delivered to a patient's residence, is not satisfied by only offering to provide consultation.

(em) Transfer the prescription to the patient or agent of the patient.

(f) Receive, when required by law and standard professional practice, permission to renew from authorized prescribers, and note on the prescription order, medication profile record or uniformly maintained and readily retrievable document the following information:

1. Date renewed.
2. Name of practitioner authorizing renewal, if different from the original prescriber.
3. Quantity of drug dispensed.
4. Identification of the pharmacist renewing the prescription.

(2) Subsection (1) (d) and (e) does not prohibit institutional pharmacists or community pharmacists serving institutions from receiving prescription orders, dispensing and returning prescription medications consistent with accepted inpatient institutional drug distribution systems. Subsection (1) applies to any institutional pharmacy dispensing to outpatients, including prescriptions for discharged patients.

(3) A pharmacist may supervise no more than one pharmacy intern and 4 pharmacy technicians engaged in compounding and dispensing activities as described in sub. (1), except a higher ratio

may be authorized by the board upon request to and approval by the board of a specific plan describing the manner in which additional interns or pharmacy technicians shall be supervised.

(4) A system for compounding and dispensing not in conformance with subs. (1) to (3) may be used if reviewed and approved by the board.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; **am.** (1) (intro.), (d) and (f) (intro.), Register, August, 1991, No. 428, eff. 9-1-91; **am.** (1) (e), Register, January, 1996, No. 481, eff. 2-1-96; **am.** (1) (a), (e), (f) (intro.), (3) and cr. (1) (em), Register, December, 1998, No. 516, eff. 1-1-99; **am.** (1) (a), Register, November, 1999, No. 527, eff. 12-1-99; **am.** (3), Register, April, 2001, No. 544, eff. 5-1-01.

Phar 7.015 Pharmacy technicians. (1) As used in this section, "pharmacy technician" means a non-pharmacist or non-pharmacist intern who, under the general supervision of a pharmacist who regularly coordinates, directs and inspects the activities of the pharmacy technician, assists the pharmacist in the technical and nonjudgmental functions related to the practice of pharmacy in the processing of prescription orders and inventory management. "Pharmacy technician" does not include ancillary persons which include, clerks, secretaries, cashiers or delivery persons, who may be present in the pharmacy.

(2) A pharmacist may delegate technical dispensing functions to a pharmacy technician, but only under the general supervision of the pharmacist where the delegated functions are performed. Technical dispensing functions include:

(a) Accepting written or electronic prescription orders of the prescribing practitioner or from the prescribing practitioner's agent.

(b) Accepting original oral prescription orders from the prescribing practitioner or prescribing practitioner's agent, if the conversation is recorded and listened to and verified by the pharmacist prior to dispensing.

(c) Requesting authorization for a refill from the prescribing practitioner.

(d) Accepting oral authorization for a refill from the prescribing practitioner or prescribing practitioner's agent, provided there are no changes to the original prescription order.

(e) Accepting a request from a patient to refill a prescription.

(f) Obtaining and entering patient or prescription data into the patient information system.

(g) Preparing a prescription label.

(h) Retrieving medication from stock, counting or measuring medication, and placing the medication in its final container.

(i) Reconstituting prefabricated dosage forms.

(j) Compounding pharmaceuticals pursuant to written policies and procedures.

(k) Affixing a prescription label to its final container.

(L) Placing ancillary information on the prescription label.

(m) Prepackaging and labeling drugs for dispensing by a pharmacist.

(n) Preparing unit dose carts for final review by a pharmacist.

(o) Retrieving and transporting stock medication to and from pharmacist approved areas.

(p) Other technical functions that do not require the professional judgment of a pharmacist.

(3) A pharmacy technician may not do any of the following:

(a) Provide the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

(b) Perform any of the following tasks:

1. Participate in final drug utilization reviews.

2. Make independent therapeutic alternate drug selections.

3. Participate in final drug regimen screening, including screening for therapeutic duplication, drug-to-drug interactions, incorrect dosage, incorrect duration of treatment, drug allergy reactions and clinical abuse or misuse.

4. Perform any act necessary to be a managing pharmacist.

5. Administer any prescribed drug products, devices or vaccines.

(c) Provide patient counseling, consultation, or patient specific judgment, such as interpreting or applying information, including advice relating to therapeutic values, potential hazards and uses.

(d) Transfer the prescription to the patient or agent of the patient.

(4) The pharmacist shall provide the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription prior to the delivery of the prescription to the patient or the patient's representative.

History: Cr. Register, April, 2001, No. 544, eff. 5-1-01.

Phar 7.02 Prescription label; name of drug or drug product dispensed. No prescription drug may be dispensed unless the prescription label discloses the brand name and strength, or the generic name, strength, and manufacturer or distributor of the drug or drug product dispensed unless the prescribing practitioner requests omission of the above information. The prescription label shall not contain the brand or generic name of any drug or drug product other than that actually dispensed.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; Register, August, 1991, No. 428, eff. 9-1-91; am. Register, January, 1996, No. 481, eff. 2-1-96.

Phar 7.03 Prescription renewal limitations. A prescription order for any drug other than controlled substances, which bears renewal authorization permitting the pharmacist to renew the prescription as needed (PRN) by the patient, shall not be renewed beyond one year from the date originally prescribed. No prescription order containing either specific or PRN renewal authorization is valid after the patient-physician relationship has ceased.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; Register, August, 1991, No. 428, eff. 9-1-91.

Phar 7.04 Return or exchange of health items. (1) In this section:

(a) "Health item" means drugs, devices, hypodermic syringes, needles or other objects for injecting a drug, medicines, or items of personal hygiene.

(b) "Inpatient health care facility" means any hospital, nursing home, county home, county mental hospital, tuberculosis sanitarium or similar facility, but does not include community-based residential facilities, jails or prison facilities.

(2) No health items after taken from a pharmacy where sold, distributed or dispensed, may be returned, except for any of the following:

(a) From an inpatient health care facility, provided they are in their original containers and the pharmacist determines the contents are not adulterated or misbranded.

(b) Where the health items were dispensed in error, were defective, adulterated, misbranded, or dispensed beyond their expiration date.

(c) When in the professional judgment of the pharmacist substantial harm could result to the public or a patient if they were to remain in the possession of the patient, patient's family or agent, or other person.

(3) Health items returned to a pharmacy pursuant to sub. (2) (b) and (c), may not be sold, resold, or repackaged and sold or resold, given away, or otherwise distributed or dispensed. Returned health items shall either be destroyed at the pharmacy or delivered for destruction or other disposal by an authorized person or entity.

(4) It is not a "return" for a patient or agent of a patient to deliver a previously dispensed drug or device to a pharmacy for the purpose of repackaging and relabeling of that previously dispensed drug or device, and subsequent return of the drug or device for the same patient's use.

Note: The DEA does not permit the return of controlled substances to a pharmacy from a non-DEA registrant under any circumstances.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. Register, August, 1991, No. 428, eff. 9-1-91; r. and recr., Register, December, 1998, No. 516, eff. 1-1-99.

Phar 7.05 Prescription records. (1) A record of all prescriptions dispensed shall be maintained for a period of 5 years after the date of the last renewal.

(2) All systems used for maintaining a record of any prescription dispensing shall include:

(a) Patient's identification.

(b) Name, strength and dosage form of the drug product dispensed.

(c) Quantity dispensed.

(d) Date of all instances of dispensing.

(e) Practitioner's identification.

(f) Pharmacist's identification.

(g) Retrieval designation.

(3) (a) Except as provided in sub. (5), the transfer of prescription order information for the purpose of dispensing is permissible between pharmacies on an unlimited basis pursuant to the following requirements:

1. The transfer is communicated directly between 2 pharmacists and the pharmacist making the transfer records the following information:

a. The word "VOID" is written on the face of the invalidated prescription order.

b. The name and address of the pharmacy to which it is transferred, the name of the pharmacist receiving the prescription order, the date and the name of the pharmacist transferring the information are recorded on the reverse side of the invalidated prescription order.

(b) The pharmacist receiving the transferred prescription order information shall record in writing the following:

1. The word "TRANSFER" on the face of the transferred prescription order.

2. The date of issuance of the original prescription order.

3. The original number of renewals authorized on the original prescription order.

5. The number of valid renewals remaining and the date of the last renewal.

6. The pharmacy's name, address, and the prescription order number from which the prescription order information was transferred.

7. The name of the pharmacist making the transfer.

8. The name, address and telephone number of the pharmacy from which the original prescription order was transferred if different from subd. 6.

(c) The original and transferred prescription orders shall be maintained for a period of 5 years from the date of the last renewal.

(4) A written copy of any prescription order for a prescribed drug provided by a pharmacist shall be identified in writing as "COPY — FOR INFORMATION ONLY". No prescribed drug may be dispensed based on an information copy.

(5) The transfer of original prescription order information for the purpose of renewal dispensing of a controlled substance is permissible between 2 pharmacies only on a one-time basis. However, pharmacies having access to a common central processing unit are not limited in the transfer of original prescription order information pertaining to controlled substances for the purpose of renewal dispensing if prior written approval is received from the board.

Note: This procedure requires a variance from the federal drug enforcement administration (DEA) for controlled substances. Requests shall be filed with the Administrator, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537.

(6) A computerized system may be used for maintaining a record, as required under this section, of prescription dispensing and transfers of prescription order information for the purposes of renewal dispensing, if the system:

(a) Is capable of producing a printout of any prescription data which the user pharmacy is responsible for maintaining. The system shall be designed so that the pharmacy can receive the printout within 48 hours after requesting the printout.

(b) Is equipped with an auxiliary procedure which, during periods of down-time, shall be used for documentation of prescription dispensing. The auxiliary procedure shall ensure that prescription renewals are authorized by the original prescription order, that the maximum number of prescription renewals has not been exceeded and that all of the appropriate data are retained for on-line entry as soon as the computer system is again available for use.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; cr. (5), Register, September, 1987, No. 381, eff. 10-1-87; CR 00-165: am. (3) (a) (intro.), (b) 6., (c), (5) and (6) (intro.), r. (3) (b) 4., cr. (3) (b) 8. Register July 2001, No. 547 eff. 8-1-01.

Phar 7.065 Answering machines in pharmacies.

Oral prescription orders may be received at a pharmacy via a telephone answering device and dispensed by the pharmacist if the voice of the physician or physician's agent is known to the pharmacist, and provided other requirements of reducing the prescription order to writing, labeling and filing are met.

History: Cr. Register, December, 1998, No. 516, eff. 1-1-99.

Phar 7.07 Medication profile record system. (1)

An individual medication profile record system shall be maintained in all pharmacies for persons for whom prescriptions, original or renewal, are dispensed for outpatient use. The system shall be capable of permitting the retrieval of information. The system need not be limited to individual medication profile records.

(2) The following minimum information shall be retrievable:

- (a) Patient name, or other identifying information.
- (b) Address of the patient.
- (c) Birth date of the patient if obtainable.
- (d) Name of the drug product dispensed.
- (e) Strength of the drug product dispensed.
- (f) Dosage form of the drug product dispensed.
- (g) Quantity of the drug product dispensed.
- (h) Directions for use.
- (i) Retrieval designation assigned to the prescription order.

(j) Date of all instances of dispensing, for original and renewal prescriptions.

(k) Practitioner identification.

Note: This subsection incorporates renewal dispensing information required by federal law (21 CFR 1306.22) and state law (s. 450.11 (5), Stats.).

(3) The pharmacist shall be responsible for attempting to ascertain and record any patient allergies, adverse drug reactions, drug idiosyncrasies, and any chronic conditions which may affect drug therapy as communicated by the patient or agent of the patient. If none, this should be indicated.

(4) At the time a prescription order is reviewed by the pharmacist for dispensing, the pharmacist shall review the medication profile record of the patient for the previously dispensed medication history and shall determine whether the prescription order presented should be dispensed.

(5) Medication profile records, if used as the only documentation of renewal dispensing, shall be maintained for a period of not less than 5 years following the date of the last entry. If the profile records are not used as the only documentation of renewal dispensing they shall be maintained for a period of not less than 1 year from the date of the last entry.

History: Cr. Register, January, 1989, No. 397, eff. 2-1-89; renum. from Phar 7.08, Register, August, 1991, No. 428, eff. 9-1-91; am. (1), Register, December, 1998, No. 516, eff. 1-1-99.

Phar 7.08 Prescription orders transmitted electronically. (1)

Except as provided in s. 453.068 (1) (c) 4., Stats., and as otherwise prohibited by law, prescription orders may be accepted and dispensed if they have been transmitted electronically from a practitioner or his or her designated agent to a pharmacy via computer modem or other similar electronic device. Prescription orders transmitted by facsimile machine are not considered electronic prescription orders; but rather, written prescription orders.

Note: Prescription orders for schedule II controlled substances may not be transmitted electronically except as emergency orders, subject to the same requirements for oral emergency orders for schedule II controlled substances. See s. 961.38 (1r) and (2), Stats., and s. Phar 8.09.

(2) A pharmacist may dispense a prescription pursuant to a prescription order transmitted electronically, if the pharmacist assures the prescription order does all of the following:

(a) Was sent only to the pharmacy of the patient's choice and only at the option of the patient, with no intervening person or third party having access to the prescription order other than to forward it to the pharmacy.

(b) Identifies the individual sender's name and telephone number for oral confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission.

(c) Is designated "electronically transmitted prescription", or with similar words or abbreviations to that effect.

(d) Contains all other information that is required in a prescription order.

(3) The prescribing practitioner's electronic signature, or other secure method of validation shall be provided with a prescription order electronically transmitted via computer modem or other similar electronic device.

(4) Any visual or electronic document received in connection with an electronically transmitted prescription order shall be accessible only within the professional service area of the pharmacy to protect patient confidentiality and assure security.

(5) A pharmacist who receives a prescription order electronically shall ensure the security, integrity and confidentiality of the prescription order and any information contained in the order. To maintain the confidentiality of patient records, the electronic system shall have adequate security and system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records. Once the prescription has been dispensed, any alterations in prescription order drug data shall be documented including the identification of the pharmacist responsible for the alteration.

(6) Access to the electronic mail system for the receipt of prescription orders electronically may only be acquired by use of a password or passwords, known only to individuals authorized to access the system.

(7) A pharmacist may not use any electronic device to circumvent his or her responsibilities with regard to documenting, authenticating and verifying prescription orders or in order to circumvent other pharmacy laws.

History: Cr. Register, November, 1999, No. 527, eff. 12-1-99.

Phar 7.09 Automated dispensing systems. **(1)** In this section:

(a) "Automated dispensing system" means a mechanical system that perform operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing or distribution of medications, and which collects, controls, and maintains all transaction information.

(b) "Inpatient health care facility" means any hospital, nursing home, county home, county mental hospital, or tuberculosis sanatorium, but does not include community-based residential facilities.

(2) An automated dispensing system may be used in a community pharmacy, as provided in this section.

(3) An automated dispensing system may be used as provided in this section by an institutional pharmacy serving an inpatient health care facility, that has an established program of receiving prescription orders, and dispensing and returning prescription medications consistent with accepted inpatient institutional drug distribution systems. An automated dispensing system used by an institutional pharmacy shall only be located in that institutional pharmacy or within the inpatient health care facility.

(4) The managing pharmacist of a community pharmacy or an institutional pharmacy is responsible for all of the following:

(a) Assuring that the automated dispensing system is in good working order and accurately dispenses the correct strength, dosage form, and quantity of the drug prescribed and complying with the recordkeeping and security safeguards pursuant to sub. (5).

(b) Implementing an ongoing quality assurance program that monitors performance of the automated dispensing system, which is evidenced by written policies and procedures.

(c) Providing the board with prior written notice of the installation or removal of an automated dispensing system. The notice provided shall include, but is not limited to the:

1. Name and address of the pharmacy.

2. Initial location of the automated dispensing system. The automated dispensing system may thereafter be relocated within the pharmacy or inpatient health care facility without providing subsequent notification to the board.

3. Identification of the managing pharmacist.

(d) Assigning, discontinuing or changing personnel access to the system.

(e) Assuring that access to the medications comply with state and federal laws.

(f) Assuring that the automated dispensing system is stocked accurately and in accordance with established written policies and procedures.

(5) An automated dispensing system shall comply with the following provisions:

(a) A pharmacy shall maintain on-site the following documentation relating to an automated dispensing system:

1. Name and address of the pharmacy or inpatient health care facility where the system is being used.

2. The system manufacturer's name, model and serial number.

3. Description of how the system is used.

4. Written quality assurance procedures to determine continued appropriate use of the system.

5. Except as required pursuant to par. (b), written policies and procedures for system operation, safety, security, accuracy, access and malfunction.

(b) All written policies and procedures shall be maintained in the pharmacy responsible for the automated dispensing system.

(c) An automated dispensing system shall have adequate security systems and procedures, evidenced by written policies and

procedures to prevent unauthorized access to maintain patient confidentiality and to comply with federal and state laws.

(d) Records and data kept by the automated dispensing system shall meet the following requirements:

1. All events involving the contents of the automated dispensing systems must be recorded electronically.

2. Records shall be maintained by the pharmacy and be available to the board. Records shall include:

a. The time and location of the system accessed.

b. Identification of the individual accessing the system.

c. Type of transaction.

d. Name, strength, dosage form and quantity of the drug accessed.

e. Name of the patient for whom the drug was ordered.

f. Such additional information as the managing pharmacist may deem necessary.

(e) The stocking of all medications in the automated dispensing system shall be accomplished by qualified personnel under no less than the general supervision of a licensed pharmacist; except that when an automated dispensing system is located within a pharmacy the supervision must be direct.

(f) A record of medications stocked into an automated dispensing system shall be maintained for 5 years and shall include identification of the person stocking and pharmacist checking for accuracy.

(g) All containers of medications stored in the automated dispensing system shall be packaged and labeled in accordance with state and federal law.

(h) All aspects of handling controlled substances shall meet the requirements of all state and federal law.

(i) The automated dispensing system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated dispensing system, in accordance with state and federal law.

(j) The automated dispensing system shall provide a mechanism for securing and accounting for medication returned to the system and accounting for wasted medications in accordance with state and federal law.

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00.

Phar 7.40 Administration of drug products and devices other than vaccines. A pharmacist may administer a drug product, as defined in s. 450.01 (1), Stats., or device, as defined in s. 450.01 (6), Stats., in the course of teaching a patient self-administration techniques except a pharmacist may not administer by injection a prescribed drug product or device unless he or she satisfies each of the following:

(1) The pharmacist has successfully completed 12 hours in a course of study and training, approved by the American council on pharmaceutical education or the board, in injection techniques, emergency procedures and record keeping.

(2) The pharmacist has in effect liability insurance against loss, expense and liability resulting from errors, omissions or neglect in the administration by injection of prescribed drug products or devices in an amount that is not less than \$1,000,000 for each occurrence and \$2,000,000 for all occurrences in any one policy year. The pharmacist shall maintain proof that he or she satisfies this requirement and, upon request, shall provide copies of such proof to the department or board.

(3) The pharmacist has written procedures regarding the administration by injection of a prescribed drug product or device in the course of teaching self-administration techniques to a patient.

Note: To administer a vaccine a pharmacist must meet the requirements in s. 450.035, Stats.

History: Cr. Register, December, 1999, No. 528, eff. 1-1-00.

Chapter Phar 8

REQUIREMENTS FOR CONTROLLED SUBSTANCES

Phar 8.01 Scope.
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Phar 8.01 Scope. Procedures governing the manufacture, distribution and dispensing of controlled substances pursuant to ch. 961, Stats., are set forth generally by that chapter and specifically by sections of this chapter and chs. Phar 12 and 13.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. Register, August, 1991, No. 428, eff. 9-1-91; am. Register, December, 1998, No. 516, eff. 1-1-99.

Phar 8.02 Records. (1) Any pharmacy, practitioner, or other federal drug enforcement administration registrant, as referenced in ch. 961, Stats., shall maintain complete and accurate records of each controlled substance received, manufactured, distributed, dispensed or disposed of in any other manner.

(2) Records required by the federal controlled substances act and ch. 961, Stats., shall be maintained at the location where the drug is received, manufactured, distributed or dispensed, and be available for inspection by authorized persons for at least 5 years from the date of such record. Financial and shipping records such as invoices and packing slips, but not executed order forms, may be kept at a central location. A complete and accurate biennial physical inventory of all schedule II, III, IV and V controlled substances pursuant to ss. 961.16, 961.18, 961.20 and 961.22, Stats., and ch. CSB 2 on hand shall be made in conformance with all applicable federal and state laws.

(3) Required records shall be maintained as follows:

(a) Records of schedule II controlled substances, other than prescription orders, shall be maintained separately from all other records.

(b) Records of schedule III, IV and V controlled substances shall be maintained either separately or in such form that the information required is readily retrievable from the registrant's ordinary records.

(c) The official drug enforcement administration order forms, DEA form 222, used in the procurement and distribution of schedule II substances shall be maintained at the locations from which the drug was distributed and where it is received.

(d) Any person authorized to manufacture, distribute or dispense controlled substances shall maintain complete and accurate records with the following information:

1. The name of the substance.
2. The dosage form, strength and quantity of the substance.
3. The quantity and date of distribution as well as the name, address and DEA registration number of the person to whom distributed.
4. The number of units and date of receipt as well as the name, address and DEA registration number of the person from whom received.
5. The name and address of the person for whom dispensed, date of dispensing, quantity dispensed and name or initials of the individual who dispensed the substance.

(e) Records for dispensed schedule V substances shall be maintained as follows:

1. If a schedule V drug is dispensed pursuant to the prescription order of a practitioner, the prescription shall be labeled prop-

erly and the order filed in accordance with the requirements for schedule III and IV orders.

2. If a schedule V drug is dispensed other than pursuant to a prescription order, the dispenser shall make the record required by s. 961.23, Stats., in a bound controlled substance V register at the time of the transaction.

(f) Any pharmacy, practitioner or other drug enforcement administration registrant authorized to possess controlled substances shall notify the regional office of the drug enforcement administration, the local police, and the pharmacy examining board of the theft or loss of any controlled substances upon discovery of such theft or loss.

Note: The Drug Enforcement Administration regional office is at 1800 Dirksen Federal Building, 219 S. Dearborn, Chicago, Illinois 60604.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. (3)(f), r. (4)(a) and (b), Register, August, 1991, No. 428, eff. 9-1-91; am. (1), (2) and (3)(a) 2., Register, December, 1998, No. 516, eff. 1-1-99.

Phar 8.03 Filing prescription orders. (1) All controlled substance prescription orders shall be maintained on file, in chronological order, for a period of at least 5 years. The orders shall be readily accessible to enforcement personnel authorized by s. 961.51, Stats.

(2) Schedule II prescription orders may be filed separately from all other orders or they may be filed with those for schedule III, IV and V drugs provided all orders in the file for schedule III, IV and V drugs are stamped in red ink with the letter "C" one inch in height, in the lower right hand corner of the order. Under no circumstances may schedule II orders be filed together with those for non-controlled drugs.

(3) Schedule III, IV and V prescription orders may be filed with those for non-controlled drugs provided that orders for schedule III, IV and V drugs are stamped in red ink with the letter "C" one inch in height in the lower right hand corner of the order or orders for schedule III, IV and V substances may be filed separately. However, if a pharmacy employs an automated data processing system or other electronic recordkeeping system for prescription orders which permits identification by prescription order number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription order with a red "C" is waived.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. (2) and (3), Register, August, 1991, No. 428, eff. 9-1-91; am. (1) and (3), Register, December, 1998, No. 516, eff. 1-1-99.

Phar 8.04 Purpose of issue of prescription order.

(1) Prescription orders for controlled substances shall be issued for a legitimate medical purpose by individual practitioners acting in the usual course of professional practice. Responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who dispenses the prescription. An order purporting to be a prescription order not issued in the usual course of professional treatment or in legitimate and authorized research is not a prescription order within the meaning and intent of ss. 450.01 (21) and 961.38, Stats. The person knowingly dis-

dispensing pursuant to such a purported order, as well as the person issuing it, shall be subject to the penalties provided for violation of the provision of law relating to controlled substances.

(2) A prescription order issued by a practitioner to obtain controlled substances for the purpose of general dispensing or administration to patients by the practitioner is not valid.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. Register, August, 1991, No. 428, eff. 9-1-91; am. (1), Register, December, 1998, No. 516, eff. 1-1-99.

Phar 8.05 Dispensing. (1) All controlled substance prescription orders shall be dated as of, and signed on, the day issued and shall contain the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address and registration number of the practitioner. Prescription orders shall be written with ink or indelible pencil or be typewritten and shall be signed by the practitioner. Orders for controlled substances may be issued only by individual practitioners who are authorized to prescribe controlled substances by the jurisdiction in which he or she is licensed to practice and registered or exempt from registration under the federal controlled substances act.

(2) A pharmacist may dispense a controlled substance listed in schedule II, III or IV only pursuant to a prescription order issued by an individual practitioner. The order shall be initialed and dated by the dispensing pharmacist as of the date the prescription is dispensed. If the person accepting the medication pursuant to any prescription order for a schedule II controlled substance, specified in s. 961.16, Stats., is not personally known to the pharmacist, there shall be written in ink, on the reverse side, the printed name, signature and address of the person.

(3) An individual practitioner may dispense directly a controlled substance listed in schedule II, III or IV provided that the prescription container is labeled and records are maintained in accordance with the requirements of this code.

(4) A prescription containing a controlled substance listed in schedule II may be dispensed only pursuant to a written order signed by the prescribing individual practitioner, except in emergency situations. A prescription for a controlled substance listed in schedule II may not be dispensed more than 60 days after the date of issue on the prescription order.

(7) A prescription order for a controlled substance may not be dispensed unless the prescription order contains all of the information required in sub. (1). For any controlled substance prescription order, a pharmacist may not add, modify or clarify the patient's name, the controlled substance prescribed, except for generic substitution as permitted by law, and the prescribing practitioner's signature. After consultation with the prescribing practitioner, a pharmacist may add, modify or clarify the strength, dosage form, quantity prescribed, date of issuance and directions for use for a schedule II controlled substance prescription order. For a schedule II controlled substance prescription order, a pharmacist may add, modify or clarify the registration number of the practitioner, and the address of the practitioner and the patient if that information is verifiable and retrievable from information maintained by the pharmacist or is obtained through consultation with the practitioner. A pharmacist may add, modify or clarify any information allowed in this subsection missing from a prescription order for a schedule III, IV or V controlled substance that is verifiable and retrievable from information maintained by the pharmacist or that is obtained through consultation with a practitioner. A patient may only provide information to a pharmacist to add, modify or clarify the patient's address. The prescription order shall be initialed and dated by the pharmacist and shall indicate the addition, modification or clarification of information and the manner by which the pharmacist obtained that information.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. (1), (2), (3) and (5), cr. (6), Register, August, 1991, No. 428, eff. 9-1-91; cr. (7), Register, January,

1996, No. 481, eff. 2-1-96; am. (4), Register, February, 1996, No. 482, eff. 3-1-96; am. (2), Register, December, 1998, No. 516, eff. 1-1-99; am. (1) and (7), r. (6), Register, February, 2001, No. 542, eff. 3-1-01; CR 01-154: am. (4), r. (5), Register 2002 No. 559, eff. 8-1-02.

Phar 8.06 Renewing prescriptions. (1) No prescription containing a schedule II substance may be renewed.

(2) The prescribing practitioner may authorize renewals of schedule III or IV controlled substances on the original prescription order or through an electronic or oral renewal authorization transmitted to the pharmacist. The following conditions must be met:

(a) The pharmacist obtaining the electronic or oral authorization shall note on the prescription order, medication profile record or readily retrievable and uniformly maintained document the following information:

1. Date authorization is received.
2. Quantity of drug authorized.
3. Number of renewals.
4. Identification of practitioner authorizing the renewals if different from the original prescriber.
5. Identification of the pharmacist who received the authorization.

(b) The quantity of each renewal authorized is equal to or less than the quantity authorized for the initial dispensing of the original prescription.

(3) No prescription containing a controlled substance listed in schedule III or IV may be dispensed or renewed more than 6 months after the date on which the prescription order was issued and no prescription authorized to be renewed may be renewed more than 5 times.

(4) A prescription containing a drug listed in schedule V may be renewed only as expressly authorized by the practitioner.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; renum. (2) and (3) to be (3) and (4) and am. (3), cr. (2), Register, August, 1991, No. 428, eff. 9-1-91; am. (2) (intro.) and (a) (intro.), Register, November, 1999, No. 527, eff. 12-1-99.

Phar 8.07 Partial dispensing. (1) A pharmacist may partially dispense a prescription containing a controlled substance listed in schedule III, IV and V.

(2) The partial dispensing of a prescription containing a controlled substance listed in schedule II is permissible, if the pharmacist is unable to supply the full quantity called for in a written or emergency electronic or oral prescription order, and the pharmacist makes a notation of the quantity supplied on the face of the written prescription order or written record of the emergency electronic or oral prescription order. The remaining portion of the prescription may be dispensed within 72 hours of the first partial dispensing. If the remaining portion is not dispensed within the 72 hour period, the pharmacist shall so notify the prescribing individual practitioner. No further quantity may be supplied beyond the 72 hours without a new prescription order.

(3) Prescription orders for schedule II controlled substances written for patients in long term care facilities (LTCF) or for patients with a medical diagnosis documenting a terminal illness may be dispensed in partial quantities to include individual dosage units. The prescribing practitioner may document a terminal illness by writing upon the face of the prescription order the phrase "terminal illness" or words of similar meaning. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially dispensing the prescription. Documentation of a terminal illness, whether substantiated by the presence of an appropriate phrase written upon the face of the prescription order or through pharmacist contact with the prescribing practitioner, shall be placed within the individual medication profile record maintained under s. Phar 7.07. The pharmacist shall record on the prescription order whether the patient is "terminally ill" or an "LTCF patient." A prescription order that is partially dispensed and does not contain the notation "terminally ill" or "LTCF

patient" shall be deemed to have been dispensed in violation of this section. For each partial dispensing, the dispensing pharmacist shall record on the back of the prescription order or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial dispensing, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist. Subsequent partial dispensing is not permitted under this section if the patient becomes deceased, or is no longer diagnosed as terminally ill, or no longer resides within an LTCF. The total quantity of a schedule II controlled substance dispensed by partial dispensing may not exceed the total quantity prescribed. Prescription orders for schedule II controlled substances for patients in an LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless terminated earlier by the discontinuance of medication.

(4) Information pertaining to current prescription orders for schedule II controlled substances for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system if the system has the capability to permit:

(a) Display or printout of: the original prescription order designation; date of issue; identification of prescribing practitioner; identification of patient; name and address of the LTCF or name and address of the hospital or residence of the patient; identification of medication authorized, including dosage form, strength and quantity; listing of partial quantities that have been dispensed under each prescription order and the information required in sub. (3).

(b) Immediate (real time) updating of the prescription order record each time there is partial dispensing of the prescription.

(c) Retrieval of partially dispensed schedule II prescription information identical to that required by s. Phar 7.05 (2) for all prescription renewal information.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; r. and recr. Register, August, 1991, No. 428, eff. 9-1-91; **am.** (3), (4) (intro.) and (a), r. (5), Register, September, 1994, No. 465, eff. 10-1-94; **am.** (2), Register, November, 1999, No. 527, eff. 12-1-99.

Phar 8.08 Labeling prescriptions. (1) The pharmacist dispensing a prescription containing a controlled substance shall affix to the immediate container a label showing the date of dispensing; the pharmacy name and address; serial number of the prescription; full name of the patient; name of the prescribing practitioner; directions for use; and cautionary statements, contained in the prescription order or required by law.

(2) Practitioners who personally dispense any controlled substance to patients in the course of their professional practice other than by prescribing or administering shall conform to ch. Med 17, standards for dispensing drugs.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; **am.** Register, August, 1991, No. 428, eff. 9-1-91.

Phar 8.09 Emergency dispensing. (1) For the purpose of authorizing an electronic or oral prescription order for a schedule II controlled substance, the term "emergency" means those situations in which the prescribing practitioner determines that:

(a) Immediate administration of the controlled substance is necessary for proper treatment of the patient.

(b) No appropriate alternative treatment is available, including the administration of a drug which is not a schedule II controlled substance.

(c) It is not reasonably possible for the prescribing practitioner to provide a written prescription order to be presented to the pharmacist prior to dispensing.

(2) In an emergency a pharmacist may dispense a controlled substance listed in schedule II upon receiving electronic or oral authorization of a practitioner if:

(a) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period.

(b) The prescription order is immediately reduced to writing by the pharmacist and contains all information required in s. Phar 8.05, except for the signature of the practitioner.

(3) If the practitioner is not known to the pharmacist, the pharmacist shall make a reasonable effort to determine that the electronic or oral authorization came from an authorized practitioner, which may include a call back to the prescribing practitioner using the practitioner's phone number as listed in the telephone directory and other good faith efforts to insure the practitioner's identity.

(4) Within 7 days after authorizing an emergency electronic or oral prescription order, the practitioner shall cause a written order for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of s. Phar 8.05, the order shall contain on its face "authorization for emergency dispensing" and the date of the electronic or oral order. The written order may be delivered to the pharmacist in person or by mail, but if delivered by mail it shall be postmarked within the 7 day period. Upon receipt, the dispensing pharmacist shall attach this prescription order to the electronic or oral emergency order reduced to writing under sub. (2) (b). The pharmacist shall notify the board or department of regulation and licensing if the practitioner fails to deliver the written order. Failure of the pharmacist to provide notification shall void the authority conferred by this section to dispense without a written order of a practitioner.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; **am.** Register, August, 1991, No. 428, eff. 9-1-91; **am.** (4), Register, December, 1998, No. 516, eff. 1-1-99; **am.** (1) (intro.), (2) (intro.), (3) and (4), Register, November, 1999, No. 527, eff. 12-1-99.

Phar 8.10 Disclosure of suspicious orders of controlled substances. Manufacturers and distributors of controlled substances shall disclose suspicious orders of controlled substances. Suspicious orders include, without limitation because of enumeration, orders of unusual size, orders deviating substantially from a normal pattern and orders of unusual frequency. The licensee shall notify the regional office of the DEA and the board of all suspicious orders.

History: Cr. Register, August, 1991, No. 428, eff. 9-1-91.

Phar 8.11 Controlled substances in emergency kits for long term care facilities. Long term care facilities which are not registered with the DEA shall meet all of the following requirements regarding emergency kits containing controlled substances:

(1) The source of supply must be a DEA registered hospital, pharmacy or practitioner.

(2) The pharmaceutical services committee of the facility shall establish security safeguards for each emergency kit stored in the LTCF which shall include the designation of individuals who may have access to the emergency kits and a specific limitation of the type and quantity of controlled substances permitted to be placed in each emergency kit.

(3) A pharmacist shall be responsible for proper control and accountability for such emergency kits within the LTCF which includes the requirement that the LTCF and the providing DEA registered hospital, pharmacy or practitioner maintain complete and accurate records of the controlled substances placed in the emergency kits, the disposition of those controlled substances, plus the requirement to take at least monthly physical inventories.

(4) The pharmaceutical services committee will establish the emergency medical conditions under which the controlled substances may be administered to patients in the LTCF which shall include the requirement that medication be administered by authorized personnel only as expressly authorized by an individ-

ual DEA registered practitioner and in compliance with all applicable federal and state laws.

(5) Noncompliance with this rule may result in revocation, denial or suspension of the privilege of having or placing emergency kits, containing controlled substances, in LTCF.

History: Cr. Register, August, 1991, No. 428, eff. 9-1-91.

Phar 8.12 Prescription orders transmitted by facsimile machine. **(1)** PRESCRIPTION DRUGS OTHER THAN SCHEDULE II CONTROLLED SUBSTANCES. A pharmacist may dispense a prescription drug, other than a schedule II controlled substance, pursuant to a prescription order transmitted by a facsimile machine from the practitioner or the practitioner's agent to the dispensing pharmacy if all of the following conditions are met:

(a) The transmitted facsimile prescription order shall contain all of the information required for a valid written prescription order. The order shall also contain the time and date of the transmission, as well as the telephone number and name of the transmitter.

(b) Unless the facsimile paper is non-fading, the facsimile prescription order received shall be duplicated by copy machine or other similar device and the copy must be physically attached to the order received.

(2) SCHEDULE II CONTROLLED SUBSTANCES. A pharmacist may not dispense a schedule II controlled substance pursuant to a pre-

scription order transmitted by a facsimile machine unless all of the conditions stated in sub. (1) are satisfied, and any of the following conditions are met:

(a) The prescription order is written for a schedule III controlled substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion, and is transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(b) The prescription order is written for a schedule II controlled substance for a patient in a long term care facility, and is transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(c) The prescription order is written for a schedule II controlled substance for a patient enrolled in a hospice certified by medicare under Title XVIII or licensed by this state, and is transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(3) PRESCRIPTION ORDERS TRANSMITTED BY FACSIMILE ~~CONSIDERED~~ WRITTEN ORDERS. For all purposes under chs. 450 and 961, Stats., and the rules of the board, a prescription order transmitted by facsimile machine shall be considered the original written prescription order.

History: Cr. Register, December, 1998, No. 516, eff. 1-1-99.

Chapter RL 1

PROCEDURES TO REVIEW DENIAL OF AN APPLICATION

RL 1.01	Authority and scope.
RL 1.03	Definitions.
RL 1.04	Examination failure: retake and hearing.
RL 1.05	Notice of intent to deny and notice of denial.
RL 1.06	Parties to a denial review proceeding.
RL 1.07	Request for hearing.

RL 1.08	Procedure.
RL 1.09	Conduct of hearing.
RL 1.10	Service.
RL 1.11	Failure to appear.
RL 1.12	Withdrawal of request.
RL 1.13	Transcription fees.

RL 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (1), Stats., for the purpose of governing review of a decision to deny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. RL 2. Wis. Admin. Code and s. 227.01 (3)(b), Stats.

History: Cr Register, October, 1985, No. 358, eff. 11-1-85, **am.**, Register, July, 1996, No. 487, **eff. 8-1-96.**

RL 1.02 Scope. **History:** Cr Register, October, 1985, No. 358, eff. 11-1-85, **r.**, Register, July, 1996, No. 487, **eff. 8-1-96.**

RL 1.03 Definitions. In this chapter:

(1) "Applicant" means any person who applies for a credential from the applicable credentialing authority. "Person" in this subsection includes a business entity.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(4) "Denial review proceeding" means a class 1 proceeding as defined in s. 227.01 (3)(a), Stats., in which a credentialing authority reviews a decision to deny a completed application for a credential.

(5) "Department" means the department of regulation and licensing.

(6) "Division" means the division of enforcement in the department.

History: Cr Register, October, 1985, No. 358, eff. 11-1-85; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389: **am.** (1), (4), **r.** (2), **renum.** (3) to be (5), **cr.** (2), (3), (6), Register, July, 1996, No. 487, **eff. 8-1-96.**

RL 1.04 Examination failure: retake and hearing.

(1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies, including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within 6 months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination, but has the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

History: Cr, Register, July, 1996, No. 487, **eff. 8-1-96.**

RL 1.05 Request for hearing. **History:** Cr Register, October, 1985, No. 358, eff. 11-1-85; corrections in (2) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; **r.** Register, July, 1996, No. 487, **eff. 8-1-96.**

RL 1.05 Notice of intent to deny and notice of denial.

(1) NOTICE OF INTENT TO DENY. (a) A notice of intent to deny may

be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to deny shall contain a short statement in plain language of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 45 calendar days from the date of the mailing of the notice, the credentialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the credentialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the 45 day period for requesting a hearing described in s. RL 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the 45 day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE OF DENIAL. If the credentialing authority determines that an applicant does not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix II. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

History: Cr., Register, July, 1996, **eff. 8-1-96.**

RL 1.06 Parties to a denial review proceeding. Parties to a denial review proceeding are the applicant, the credentialing authority and any person admitted to appear under s. 227.44 (2m), Stats.

History: Cr Register, October, 1985, No. 358, eff. 11-1-85; **renum.** from RL 1.04 and **am.**, Register, July, 1996, No. 487, **eff. 8-1-96.**

RL 1.07 Request for hearing. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority. The request shall be in writing and set forth all of the following:

(1) The applicant's name and address.

(2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

History: Cr., Register, July, 1996, No. 487, **eff. 11-1-96.**

RL 1.08 Procedure. The procedures for a denial review proceeding are:

(1) REVIEW OF REQUEST FOR HEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential. A request shall be granted if requirements in s. RL 1.07 are met, and the credentialing authority or its designee shall

notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(2) DESIGNATION OF PRESIDING OFFICER. An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employee borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employee by the department, except that the administrative law judge may not be an employee in the division.

(3) DISCOVERY. Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96.

RL 1.09 Conduct of hearing. (1) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 227.45 (6m), Stats.

(b) A presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

(4) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) EVIDENCE. The credentialing authority and the applicant shall have the right to appear in person or by counsel, to call, examine and cross-examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(6) BRIEFS The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING All hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96.

RL 1.10 Service. Service of any document on an applicant may be made by mail addressed to the applicant at the last address filed in writing by the applicant with the credentialing authority. Service by mail is complete on the date of mailing.

History: Cr. Register, October, 1985, No. 358, eff. 11-1-85; **renum. from RL 1.06 and am., Register, July, 1996, No. 487, eff. 8-1-96.**

RL 1.11 Failure to appear. In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal before the credentialing authority which denied the license.

History: Cr. Register, October, 1985, No. 358, eff. 11-1-85; **renum. from RL 1.07 and am., Register, July, 1996, No. 487, eff. 8-1-96.**

RL 1.12 Withdrawal of request. A request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96.

RL 1.13 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of \$1.75 per page and a copying charge of \$.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of \$.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of \$.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination of indigency under s. 977.07, Stats.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96.

Chapter RL 1
APPENDIX I
NOTICE OF INTENT TO DENY

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Intent to Deny

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL]. On the basis of the application submitted, the [CREDENTIALING AUTHORITY] intends to deny your application for reasons identified below unless, within 45 calendar days from the date of the mailing of this notice, the [CREDENTIALING AUTHORITY] receives additional information which shows that you meet the requirements for a credential.

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

If the [CREDENTIALING AUTHORITY] does not receive additional information within the 45 day period, this notice of intent to deny shall operate as a notice of denial and the 45 day period you have for requesting a hearing shall commence on the date of mailing of this notice of intent to deny.

[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. If you do not submit additional information in support of your application, you may request a hearing within 45 calendar days after the mailing of this notice. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 1
APPENDIX II
NOTICE OF DENIAL

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Denial

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL] and denies the application for the following reasons:

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. You may request a hearing within 45 calendar days after the mailing of this notice of denial. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 2

PROCEDURES FOR PLEADING AND HEARINGS

RL 2.01	Authority.
RL 2.02	Scope; kinds of proceedings.
RL 2.03	Definitions.
RL 2.035	Receiving informal complaints.
RL 2.036	Procedure for settlement conferences.
RL 2.037	Parties to a disciplinary proceeding.
RL 2.04	Commencement of disciplinary proceedings.
RL 2.05	Pleadings to be captioned.
RL 2.06	Complaint.
RL 2.07	Notice of hearing.
RL 2.08	Service and filing of complaint, notice of hearing and other papers.

RL 2.09	Answer.
RL 2.10	Administrative law judge.
RL 2.11	Prehearing conference.
RL 2.12	Settlements.
RL 2.13	Discovery.
RL 2.14	Default.
RL 2.15	Conduct of hearing.
RL 2.16	Witness fees and costs.
RL 2.17	Transcription fees.
RL 2.18	Assessment of costs.

RL 2.01 Authority. The rules in ch. RL 2 are adopted pursuant to authority in s. 440.03 (1), Stats., and procedures in ch. 227, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. Register, May, 1982, No. 317, eff. 6-1-82.

RL 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in s. 227.01 (3) (b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that s. RL 2.17 applies also to class 1 proceedings, as defined in s. 227.01 (3) (a), Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. Register, May, 1982, No. 317, eff. 6-1-82; corrections made under s. 13.93(2m) (b) 7, Stats., Register, May, 1988, No. 389; am. Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.03 Definitions. In this chapter:

(1) "Complainant" means the person who signs a complaint.
 (2) "Complaint" means a document which meets the requirements of ss. RL 2.05 and 2.06.

(3) "Department" means the department of regulation and licensing.

(4) "Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.

(6) "Division" means the division of enforcement in the department.

(7) "Informal complaint" means any written information submitted to the division or any disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline.

(8) "Licensee" means a person, partnership, corporation or association holding any license, permit, certificate or registration granted by a disciplinary authority or having any right to renew a license, permit, certificate or registration granted by a disciplinary authority.

(9) "Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.

(10) "Settlement conference" means a proceeding before a disciplinary authority or its designee conducted according to s. RL 2.036, in which a conference with one or more licensee is held to

attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. (1) and (6), renum. (7) and (8) to be (8) and (9), cr. (1), Register, May, 1982, No. 317, eff. 6-1-82; r. (1), renum. (2) to (4) to be (1) to (3), cr. (4) and (10), am. (5), (7) and (8), Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.035 Receiving informal complaints. All informal complaints received shall be referred to the division for filing, screening and, if necessary, investigation. Screening shall be done by the disciplinary authority, or, if the disciplinary authority directs, by a disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but are not limited to:

- (1) Whether the person complained against is licensed;
- (2) Whether the violation alleged is a fee dispute;
- (3) Whether the matter alleged, if taken as a whole, is trivial; and
- (4) Whether the matter alleged is a violation of any statute, rule or standard of practice.

History: Cr. Register, May, 1982, No. 317, eff. 6-1-82; am. (intro.) and (3), Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.036 Procedure for settlement conferences. At the discretion of the disciplinary authority, a settlement conference may be held prior to the commencement of a disciplinary proceeding, pursuant to the following procedures:

(1) **SELECTION OF INFORMAL COMPLAINTS.** The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:

(a) Whether the issues arising out of the investigation of the informal complaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and

(b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.

(2) **PROCEDURES.** When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. A notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in ad-

vance of any settlement conference. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agreement is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.

(3) **ORAL STATEMENTS AT SETTLEMENT CONFERENCE.** Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

History: Cr. Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.037 Parties to a disciplinary proceeding. Parties to a disciplinary proceeding are the respondent, the division and the disciplinary authority before which the disciplinary proceeding is heard.

History: Cr. Register, May, 1982, No. 317, eff. 6-1-82; renum. from RL 2.036 and am., Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.04 Commencement of disciplinary proceedings. Disciplinary proceedings are commenced when a notice of hearing is filed in the disciplinary authority office or with a designated administrative law judge.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.05 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "BEFORE THE _____" and shall be entitled: "IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST _____, RESPONDENT."

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78.

RL 2.06 Complaint. A complaint may be made on information and belief and shall contain:

(1) The name and address of the licensee complained against and the name and address of the complainant;

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the complainant demands that the disciplinary authority hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent;" and,

(4) The signature of the complainant.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. (intro.), (3) and (4), Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.07 Notice of hearing. (1) notice of hearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be substantially in the form shown in Appendix I and signed by a disciplinary authority member or an attorney in the division.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. (2) (intro.), Register, February, 1979, No. 278, eff. 3-1-79; r. and recr. Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.08 Service and filing of complaint, notice of hearing and other papers. (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with a disciplinary authority may be mailed to the disciplinary authority office or, if an administrative law judge has been designated to preside in the matter, to the administrative law judge and shall be deemed filed on receipt at the disciplinary authority office or by the administrative law judge. An answer under s. RL 2.09, and motions under s. RL 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. (2), Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.09 Answer. (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. (4), Register, February, 1979, No. 278, eff. 3-1-79; am. (1), (3) and (4), Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.10 Administrative law judge. (1) DESIGNATION. Disciplinary hearings shall be presided over by an administrative law judge employed by the department unless the disciplinary authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employee borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employee by the department, except that the administrative law judge may not be an employee in the division.

(2) AUTHORITY. An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a disciplinary authority pursuant to s. 227.46 (3), Stats., an administrative law judge presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. Unless otherwise directed by a disciplinary authority, the proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; r. and recr. (1), Register, November, 1986, No. 371, eff. 12-1-86; correction in (2) made under s. 13.93 (2m)(b) 7., Stats., Register, May, 1988, No. 389; am. Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.11 Prehearing conference. In any matter pending before the disciplinary authority the complainant and the respondent, or their attorneys, may be directed by the disciplinary authority or administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification

tion of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.12 Settlements. No stipulation or settlement agreement disposing of a complaint or informal complaint shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.13 Discovery. The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats. or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78.

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.15 Conduct of hearing. (1) PRESIDING OFFICER. The hearing shall be presided over by a member of the disciplinary authority or an administrative law judge designated pursuant to s. RL 2.10.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The complainant and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross-examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The presiding officer may require the filing of briefs.

(5) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(6) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07(5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) A presiding officer may issue protective orders according to the provision the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department of regulation and licensing in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. (1), (5) and (6), cr. (8). Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.16 Witness fees and costs. Witnesses subpoenaed at the request of the division or the disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. Register, June, 1992, No. 438, eff. 7-1-92.

RL 2.17 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of \$1.75 per page and a copying charge of \$.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of \$.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of \$.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. (1) Register, May, 1982, No. 317, eff. 6-1-82; r. and recr. Register, June, 1992, No. 438, eff. 7-1-92; am. (1) (b), Register, August, 1993, No. 452, eff. 9-1-93.

RL 2.18 Assessment of costs. (1) The proposed decision of an administrative law judge following hearing shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

(4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

History: Cr. Register, June, 1992, No. 438, eff. 7-1-92.

Chapter RL 2

APPENDIX I

NOTICE OF HEARING

THE STATE OF WISCONSIN

To each person named above as a respondent:

You are hereby notified that disciplinary proceedings have been commenced against you before the (#1). The Complaint, which is attached to this Notice, states the nature and basis of the proceeding. This proceeding may result in disciplinary action taken against you by the (#2). This proceeding is a class 2 proceeding as defined in s. 227.01 (3)(b), Wis. Stats.

Within 20 days from the date of service of the complaint, you must respond with a written Answer to the allegations of the Complaint. You may have an attorney help or represent you. The Answer shall follow the general rules of pleading contained in s. RL 2.09. If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#3) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

The original of your Answer should be filed with the Administrative Law Judge who has been designated to preside over this matter pursuant to s. RL 2.10, who is:

(#4)
Department of Regulation and Licensing
Office of Board Legal Services
P. O. Box 8935
Madison, Wisconsin 53708

You should also file a copy of your Answer with the complainant's attorney, who is:

(#5)
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, Wisconsin 53708

A hearing on the matters contained in the Complaint will be held at the time and location indicated below:

Hearing Date, Time and Location

Date: (#6)
Time: (#7)
Location: Room(#8)
1400 East Washington Ave
Madison, Wisconsin

or as soon thereafter as the matter may be heard. The questions to be determined at this hearing are whether the license previously issued to you should be revoked or suspended, whether such license should be limited, whether you should be reprimanded, whether, if authorized by law, a forfeiture should be imposed, or whether any other discipline should be imposed on you. You may be represented by an attorney at the hearing. The legal authority and procedures under which the hearing is to be held is set forth in s. 227.44, Stats., s. (#9), Stats., ch. RL 2, and s. (#10).

If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#11) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon **you** without further notice or hearing.

If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the disciplinary authority and the Administrative Law Judge within 20 days of your receiving this Notice.

Dated at Madison, Wisconsin this _____ day of, _____ 20__.

Signature of Licensing Authority Member or Attorney
(#12)

INSERTIONS

1. Disciplinary authority
2. Disciplinary authority
3. Disciplinary authority
4. Administrative Law Judge
5. Complainant's attorney
6. Date of hearing
7. Time of hearing
8. Location of hearing
9. Legal authority (statute)
10. Legal authority (administrative code)
11. Disciplinary authority
12. Address and telephone number of person signing the complaint

Chapter RL 3

ADMINISTRATIVE INJUNCTIONS

RL 3.01	Authority.	RL 3.09	Administrative law judge.
RL 3.02	Scope; kinds of proceedings.	RL 3.10	Prehearing conference.
RL 3.03	Definitions.	RL 3.11	Settlements.
RL 3.04	Pleadings to be captioned.	RL 3.12	Discovery.
RL 3.05	Petition for administrative injunction.	RL 3.13	Default.
RL 3.06	Notice of hearing.	RL 3.14	Conduct of hearing.
RL 3.07	Service and filing of petition, notice of hearing and other papers	RL 3.15	Witness fees and costs.
RL 3.08	Answer.	RL 3.16	Transcription fees.

RL 3.01 Authority. The rules in ch. RL 3 are adopted pursuant to authority in ss. 440.03 (1) and 440.21, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in public hearings before the department to determine and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and for issuance of an administrative injunction.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.03 Definitions. In this chapter:

(1) "Administrative injunction" means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under chs. 440 to 459, Stats.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 459, Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Petition" means a document which meets the requirements of s. RL 3.05.

(6) "Respondent" means the person against whom an administrative injunction proceeding has been commenced and who is named as respondent in a petition.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.04 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF REGULATION AND LICENSING and shall be entitled: "IN THE MATTER OF A PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVING _____, RE-SPONDENT."

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.05 Petition for administrative injunction. A petition for an administrative injunction shall allege that a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats. A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the attorney in the division who is prosecuting the petition for the division;

(2) A short statement in plain language of the basis for the division's belief that the respondent has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and specifying the statute or rule alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the division demands that a public hearing be held and that the de-

partment issue a special order enjoining the person from the continuation of the practice or use of the title;" and,

(4) The signature of an attorney authorized by the division to sign the petition.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.06 Notice of hearing. (1) A notice of hearing shall be sent to the respondent by the division at least 10 days prior to the hearing, except in the case of an emergency in which shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be essentially in the form shown in Appendix I and signed by an attorney in the division.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.07 Service and filing of petition, notice of hearing and other papers. (1) The petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the department may be mailed to the administrative law judge designated to preside in the matter and shall be deemed filed on receipt by the administrative law judge. An answer under s. RL 3.08, and motions under s. RL 3.14 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the department. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the department.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.08 Answer. (1) An answer to a petition shall state in short and plain terms the defenses to each allegation asserted and shall admit or deny the allegations upon which the division relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or to provide a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.09 Administrative law judge. (1) DESIGNATION. Administrative injunction proceedings shall be presided over by an administrative law judge. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employee borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employee by the department. The administrative law judge may not be an employee in the division.

(2) AUTHORITY. An administrative law judge designated under this section has the authority described in s. 227.46 (1), Stats. Unless otherwise directed under s. 227.46 (3), Stats., an administrative law judge shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted by the department as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. The proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the department objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.10 Prehearing conference. In any matter pending before the department, the division and the respondent may be directed by the administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleading, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.11 Settlements. No stipulation or settlement agreement disposing of a petition or informal petition shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the department.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.12 Discovery. The division and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the administrative law judge.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.13 Default. If the respondent fails to answer as required by s. RL 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence. The department may, for good cause, relieve the respondent from the effect of the findings and permit the respondent to answer and defend at any time before the department enters an order or within a reasonable time thereafter.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.14 Conduct of hearing. (1) ADMINISTRATIVE LAW JUDGE. The hearing shall be presided over by an administrative law judge designated pursuant to s. RL 3.09.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The division and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross-examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The administrative law judge may require the filing of briefs.

(5) MOTIONS. (a) How made. An application to the administrative law judge for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be in writing, state with particularity the grounds for the order, and set forth the relief or order sought.

(b) Filing. A motion shall be filed with the administrative law judge and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(c) Supporting papers. Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07(5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) An administrative law judge may issue protective orders according to the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.15 Witness fees and costs. Witnesses subpoenaed at the request of the division shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

RL 3.16 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

Note: The State Operational Purchasing Bulletin may be obtained from the Department of Administration, State Bureau of Procurement, 101 E. Wilson Street, 6th Floor, P.O. Box 7867, Madison, Wisconsin 53707-7867.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of \$1.75 per page and a copying charge of \$.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of \$.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of \$.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of an affidavit showing that the person is indigent according to the standards adopted in rules of the state public defender under ch. 977, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Chapter RL 3

APPENDIX I

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND
LICENSING

IN THE MATTER OF A PETITION :
FOR AN ADMINISTRATIVE, NOTICE OF
INJUNCTION INVOLVING : HEARING

(#1):
Respondent.

NOTICE OF HEARING

TO: (#2)

You are hereby notified that a proceeding for an administrative injunction has been commenced against you by the Department of Regulation and Licensing. The petition attached to this Notice states the nature and basis of the proceeding. This proceeding may result in a special order against you under s. 440.21, Stats., enjoining you from the continuation of a practice or use of a title.

A HEARING ON THE MATTERS CONTAINED IN THE PETITION WILL BE HELD AT

Date: (#3) Time: (#4)
Location: Room (#5),
1400 East Washington Avenue
Madison, Wisconsin

or as soon thereafter as the matter may be heard.

The questions to be determined at this hearing are whether (#6).

Within 20 days from the date of service of the Notice, you must respond with a written Answer to the allegations of the Petition. You may have an attorney help or represent you. Your Answer must follow the rules of pleading in s. RL 3.08 of the Wisconsin Administrative Code. File your Answer with the Administrative Law Judge for this matter who is:

(#7), Department of Regulation and Licensing, Office
of Board Legal Services,
P.O. Box 8935,
Madison, Wisconsin 53708

Please file a copy of your answer with the division's attorney, who is:

(#8), Division of Enforcement,
Department of Regulation and Licensing,
P.O. Box 8935,
Madison, Wisconsin 53708

If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from the continuation of a practice or use of a title. If a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than \$10,000 for each offense.

You may be represented by an attorney at the hearing. This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Stats. If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the Administrative Law Judge and the division within 20 days after you receive this Notice.

The legal authority and procedures under which the hearing is to be held are set forth in ss. 227.21, 440.44, (#9), Stats., and ch. RL 3, Wis. Admin. Code.

Dated at Madison, Wisconsin this _____ day of ~~20~~.

(...#10...), Attorney

INSERTIONS

1. Respondent
2. Respondent with address
3. Date of hearing
4. Time of hearing
5. Place of hearing
6. Issues for hearing
7. Administrative Law Judge
8. Division of Enforcement attorney
9. Legal authority (statute)
10. Division of Enforcement attorney

Chapter RL 4

DEPARTMENT APPLICATION PROCEDURES AND
APPLICATION FEE POLICIES

RL 4.01 Authorization.
RL 4.02 Definitions.
RL 4.03 Time for review and determination of credential applications.

RL 4.04 Fees for examinations, reexaminations and proctoring examinations.
RL 4.05 Fee for test review.
RL 4.06 Refunds.

RL 4.01 Authorization. The following rules are adopted by the department of regulation and licensing pursuant to ss. 440.05, 440.06 and 440.07, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; **am. Register, July, 1996, No. 487, eff. 8-1-96.**

RL 4.02 Definitions. (1) "Applicant" means a person who applies for a license, permit, certificate or registration granted by the department or a board.

(2) "Authority" means the department or the attached examining board or board having authority to grant the credential for which an application has been filed.

(3) "Board" means the board of nursing and any examining board attached to the department.

(4) "Department" means the department of regulation and licensing.

(5) "Examination" means the written and practical tests required of an applicant by the authority.

(6) "Service provider" means a party other than the department or board who provides examination services such as application processing, examination products or administration of examinations.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; **renum. (1) to (4) to be (4), (3), (1), (5) and am. (5), cr. (2) and (6), Register, July, 1996, No. 487, eff. 8-1-96.**

RL 4.03 Time for review and determination of credential applications. (1) **TIME LIMITS.** An authority shall review and make a determination on an original application for a credential within 60 business days after a completed application is received by the authority unless a different period for review and determination is specified by law.

(2) **COMPLETED APPLICATIONS.** An application is completed when all materials necessary to make a determination on the application and all materials requested by the authority have been received by the authority.

(3) **EFFECT OF DELAY.** A delay by an authority in making a determination on an application within the time period specified in this section shall be reported to the permit information center under s. 227.116, Stats. Delay by an authority in making a determination on an application within the time period specified in this section does not relieve any person from the obligation to secure approval from the authority nor affect in any way the authority's responsibility to interpret requirements for approval and to grant or deny approval.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; **renum. from RL 4.06 and am., Register, July, 1996, No. 487, eff. 8-1-96.**

RL 4.04 Fees for examinations, reexaminations and proctoring examinations. (1) **EXAMINATION FEE SCHEDULE.** A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(3) **EXPLANATION OF PROCEDURES FOR SETTING EXAMINATION FEES.** (a) Fees for examinations shall be established under s. 440.05 (1) (b), Stats., at the department's best estimate of the

actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a service provider.

(b) Examinations shall be obtained from a service provider through competitive procurement procedures described in ch. Adm 7.

(c) Fees for examination services provided by the department shall be established based on an estimate of the actual cost of the examination services. Computation of fees for examination services provided by the department shall include standard component amounts for contract administration services, test development services and written and practical test administration services.

(d) Examination fees shall be changed as needed to reflect changes in the actual costs to the department. Changes to fees shall be implemented according to par. (e).

(e) Examination fees shall be effective for examinations held 45 days or more after the date of publication of a notice in application forms. Applicants who have submitted fees in an amount less than that in the most current application form shall pay the correct amount prior to administration of the examination. Overpayments shall be refunded by the department. Initial credential fees shall become effective on the date specified by law.

(4) **REEXAMINATION OF PREVIOUSLY LICENSED INDIVIDUALS.** Fees for examinations ordered as part of a disciplinary proceeding or late renewal under s. 440.08 (3) (b), Stats., are equal to the fee set for reexamination in the most recent examination application form, plus \$10 application processing.

(5) **PROCTORING EXAMINATIONS FOR OTHER STATES.** (a) Examinations administered by an authority of the state may be proctored for persons applying for credentials in another state if the person has been determined eligible in the other state and meets this state's application deadlines. Examinations not administered by an authority of the state may only be proctored for Wisconsin residents or licensees applying for credentials in another state.

(b) Department fees for proctoring examinations of persons who are applying for a credential in another state are equal to the cost of administering the examination to those persons, plus any additional cost charged to the department by the service provider.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; **r. and recr. Register, May, 1986, No. 365, eff. 6-1-86; am. Register, December, 1986, No. 372, eff. 1-1-87; am. Register, September, 1987, No. 381, eff. 10-1-87; am. (3), Register, September, 1988, No. 393, eff. 10-1-88; ain. (3), Register, September, 1990, No. 417, eff. 10-1-90; r. and recr. (1) to (3), cr. (4), renum. Figure and am. Register, April, 1992, No. 436, eff. 5-1-92; am. (4) Figure, cr. (5), Register, July, 1993, No. 451, eff. 8-1-93; r. and recr. Register, November, 1993, No. 455, eff. 11-1-93; **r. (2), am. (3) (a), (b), (c), (e), (4), (5), Register, July, 1996, No. 487, eff. 8-1-96.****

RL 4.05 Fee for test review. (1) The fee for supervised review of examination results by a failing applicant which is conducted by the department is \$28.

(2) The fee for review of examination results by a service provider is the fee established by the service provider.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; **am. Register, July, 1996, No. 487, eff. 8-1-96.**

RL 4.06 Refunds. (1) A refund of all but \$10 of the applicant's examination fee and initial credential fee submitted to the department shall be granted if any of the following occurs:

(a) An applicant is found to be unqualified for an examination administered by the authority.

(b) An applicant is found to be unqualified for a credential for which no examination is required.

(c) An applicant withdraws an application by written notice to the authority at least 10 days in advance of any scheduled examination.

(d) An applicant who fails to take an examination administered by the authority either provides written notice at least 10 days in advance of the examination date that the applicant is unable to take the examination, or if written notice was not provided, submits a written explanation satisfactory to the authority that the applicant's failure to take the examination resulted from extreme personal hardship.

(2) An applicant eligible for a refund may forfeit the refund and choose instead to take an examination administered by the authority within 18 months of the originally scheduled examination at no added fee.

(3) An applicant who misses an examination as a result of being called to active military duty shall receive a full refund. The applicant requesting the refund shall supply a copy of the call up orders or a letter from the commanding officer attesting to the call up.

(4) Applicants who pay fees to service providers other than the department are subject to the refund policy established by the service provider.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. (2) (intro.). Register, May, 1986, No. 365, eff. 6-1-86; **am.** (1) and (2) (intro.), renum. (2) (c) and (3) to be (3) and (4), cr. (5), Register, September, 1987, No. 381, eff. 10-1-87; r. **and recr.** (1) and (4), Register, **April**, 1992, No. 436, eff. 5-1-92; r. (2), renum. (3) to (5) to be (2) to (4), Register, July, 1993, No. 451, eff. 8-1-93; **renum. from RL 4.03 and am., Register, July, 1996, No. 487, eff. 8-1-96.**

Chapter RL 6

SUMMARY SUSPENSIONS

RL 6.01	Authority and intent.
RL 6.02	Scope.
RL 6.03	Definitions.
RL 6.04	Petition for summary suspension.
RL 6.05	Notice of petition to respondent.
RL 6.06	Issuance of summary suspension order.

RL 6.07	Contents of summary suspension order.
RL 6.08	Service of summary suspension order.
RL 6.09	Hearing to show cause.
RL 6.10	Commencement of disciplinary proceeding
RL 6.11	Delegation.

RL 6.01 Authority and intent. (1) This chapter is adopted pursuant to authority in ss. 227.11 (2) (a) and 440.03 (1), Stats., and interprets s. 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4), Stats., the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means a person, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under s. RL 6.11.

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.04 Petition for summary suspension. (1) A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension order shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of the time and place when the petition will be presented to the licensing authority. Notice may be given by mailing a copy of the petition and notice to the last-known address of the respondent as indicated in the records of the licensing authority as provided in s. 440.11 (2), Stats. as created by 1987 Wis. Act 27. Notice by mail is complete upon mailing. Notice may also be given by any procedure described in s. 801.11, Stats.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.06 Issuance of summary suspension order. (1) If the licensing authority finds that notice has been given under s. RL 6.05 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. RL 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under s. RL 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under s. RL 6.09 prior to a formal disciplinary hearing.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.07 Contents of summary suspension order. The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension; and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.08 Service of summary suspension order. An order of summary suspension shall be served upon the respondent in the manner provided in s. 801.11, Stats., for service of summons.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.09 Hearing to show cause. (1) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify, call, examine and cross-examine witnesses, and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceeding under s. RL 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness, the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with reasonable promptness, and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.11 Delegation. (1) A board may by a two-thirds vote:

(a) Designate under s. 227.46(1), Stats., a member of the board or an employee of the department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09; or

(b) Appoint a panel of no less than two-thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09.

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. RL 6.09.

(3) Except as provided in s. 227.46(3), Stats., a delegation of authority under subs. (1) and (2) may be continuing.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

Chapter RL 7

IMPAIRED PROFESSIONALS PROCEDURE

RL 7.01	Authority and intent.
RL 7.02	Definitions.
RL 7.03	Referral to and eligibility for the procedure.
RL 7.04	Requirements for participation.
RL 7.05	Agreement for participation.
RL 7.06	Standards for approval of treatment facilities or individual therapists.

RL 7.07	Intradepartmental referral.
RL 7.08	Records.
RL 7.09	Report.
RL 7.10	Applicability of procedures to direct licensing by the department.
RL 7.11	Approval of drug testing programs.

RL 7.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 51.30, 146.82, 227.11 and 440.03, Stats.

(2) The intent of the department in adopting rules in this chapter is to protect the public from credential holders who are impaired by reason of their abuse of alcohol or other drugs. This goal will be advanced by providing an option to the formal disciplinary process for qualified credential holders committed to their own recovery. This procedure is intended to apply when allegations are made that a credential holder has practiced a profession while impaired by alcohol or other drugs or when a credential holder contacts the department and requests to participate in the procedure. It is not intended to apply in situations where allegations exist that a credential holder has committed violations of law, other than practice while impaired by alcohol or other drugs, which are substantial. The procedure may then be utilized in selected cases to promote early identification of chemically dependent professionals and encourage their rehabilitation. Finally, the department's procedure does not seek to diminish the prosecution of serious violations but rather it attempts to address the problem of alcohol and other drug abuse within the enforcement jurisdiction of the department.

(3) In administering this program, the department intends to encourage board members to share professional expertise so that all boards in the department have access to a range of professional expertise to handle problems involving impaired professionals.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; **am.** (2), Register, July, 1996, No. 487, eff. 8-1-96.

RL 7.02 Definitions. In this chapter:

(1) "Board" means any examining board or affiliated credentialing board attached to the department and the real estate board.

(2) "Board liaison" means the board member designated by the board as responsible for approving credential holders for the impaired professionals procedure under s. RL 7.03, for monitoring compliance with the requirements for participation under s. RL 7.04, and for performing other responsibilities delegated to the board liaison under these rules.

(2a) "Coordinator" means a department employee who coordinates the impaired professionals procedure.

(2b) "Credential holder" means a person holding any license, permit, certificate or registration granted by the department or any board.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Informal complaint" means any written information submitted by any person to the division, department or any board which requests that a disciplinary proceeding be commenced against a credential holder or which alleges facts, which if true, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Medical review officer" means a medical doctor or doctor of osteopathy who is a licensed physician and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with an individual's medical history and any other relevant biomedical information.

(7) "Procedure" means the impaired professionals procedure.

(8) "Program" means any entity approved by the department to provide the full scope of drug testing services for the department.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; **am.** (1), (2), (5), cr. (2a), (2b), r. (6), Register, July, 1996, No. 487, eff. 8-1-96, **cr. (6) and (8), Register, January, 2001, No. 541, eff. 2-1-01.**

RL 7.03 Referral to and eligibility for the procedure.

(1) All informal complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to s. RL 2.035. After investigation, informal complaints involving impairment may be referred to the procedure and considered for eligibility as an alternative to formal disciplinary proceedings under ch. RL 2.

(2) A credential holder who has been referred to the procedure and considered for eligibility shall be provided with an application for participation, a summary of the investigative results in the form of a draft statement of conduct to be used as a basis for the statement of conduct under s. RL 7.05 (1) (a), and a written explanation of the credential holder's options for resolution of the matter through participation in the procedure or through the formal disciplinary process pursuant to ch. RL 2.

(3) Eligibility for the procedure shall be determined by the board liaison and coordinator who shall review all relevant materials including investigative results and the credential holder's application for participation. Eligibility shall be determined upon criteria developed by each credentialing authority which shall include at a minimum the credential holder's past or pending criminal, disciplinary or malpractice record, the circumstances of the credential holder's referral to the department, the seriousness of other alleged violations and the credential holder's prognosis for recovery. The decision on eligibility shall be consistent with the purposes of these procedures as described in s. RL 7.01 (2). The board liaison shall have responsibility to make the determination of eligibility for the procedure.

(4) Prior to the signing of an agreement for participation the credential holder shall obtain a comprehensive assessment for chemical dependency from a treatment facility or individual therapist approved under s. RL 7.06. The credential holder shall arrange for the treatment facility or individual therapist to file a copy of its assessment with the board liaison or coordinator. The assessment shall include a statement describing the credential holder's prognosis for recovery. The board liaison and the credential holder may agree to waive this requirement.

(5) If a credential holder is determined to be ineligible for the procedure, the credential holder shall be referred to the division for prosecution.

(6) A credential holder determined to be ineligible for the procedure by the board liaison or the department may, within 10 days of notice of the determination, request the credentialing authority to review the adverse determination.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. (2) to (6), Register, July, 1996, No. 487, eff. 8-1-96.

RL 7.04 Requirements for participation. (1) A credential holder who participates in the procedure shall:

- (a) Sign an agreement for participation under s. RL 7.05.
- (b) Remain free of alcohol, controlled substances, and prescription drugs, unless prescribed for a valid medical purpose.
- (c) Timely enroll and participate in a program for the treatment of chemical dependency conducted by a facility or individual therapist approved pursuant to s. RL 7.06.
- (d) Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board liaison or department.
- (e) Submit random monitored blood or urine samples for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department under s. RL 7.11, as required.
- (f) Execute releases valid under state and federal law in the form shown in Appendix I to allow access to the credential holder's counseling, treatment and monitoring records.
- (g) Have the credential holder's supervising therapist and work supervisors file quarterly reports with the coordinator.
- (h) Notify the coordinator of any changes in the credential holder's employer within 5 days.
- (i) File quarterly reports documenting the credential holder's attendance at meetings of self-help groups such as alcoholics anonymous or narcotics anonymous.

(2) If the board liaison or department determines, based on consultation with the person authorized to provide treatment to the credential holder or monitor the credential holder's enrollment or participation in the procedure, or monitor any drug screening requirements or restrictions on employment under sub. (1), that a credential holder participating in the procedure has failed to meet any of the requirements set under sub. (1), the board liaison may request that the board dismiss the credential holder from the procedure. The board shall review the complete record in making this determination. If the credential holder is dismissed the matter shall be referred to the division.

(3) If a credential holder violates the agreement and the board does not dismiss and refer the credential holder to the division, then a new admission under s. RL 7.05 (1) (a) shall be obtained for violations which are substantiated.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. Register, July, 1996, No. 487, eff. 8-1-96; am. (1) (e), Register, January, 2001, No. 541, eff. 2-1-01.

RL 7.05 Agreement for participation. (1) The agreement for participation in the procedure shall at a minimum include:

- (a) A statement describing conduct the credential holder agrees occurred relating to participation in the procedure and an agreement that the statement may be used as evidence in any disciplinary proceeding under ch. RL 2.
- (b) An acknowledgement by the credential holder of the need for treatment for chemical dependency;
- (c) An agreement to participate at the credential holder's expense in an approved treatment regimen.
- (d) An agreement to submit to random monitored drug screens provided by a drug testing program approved by the department under s. RL 7.11 at the credential holder's expense, if deemed necessary by the board liaison.

(e) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board liaison.

(f) An agreement to furnish the coordinator with signed consents for release of information from treatment providers and employers authorizing the release of information to the coordinator and board liaison for the purpose of monitoring the credential holder's participation in the procedure.

(g) An agreement to authorize the board liaison or coordinator to release information described in pars. (a), (c) and (e), the fact that a credential holder has been dismissed under s. RL 7.07 (3) (a) or violated terms of the agreement in s. RL 7.04 (1) (b) to (e) and (h) concerning the credential holder's participation in the procedure to the employer, therapist or treatment facility identified by the credential holder and an agreement to authorize the coordinator to release the results of random monitored drug screens under par. (d) to the therapist identified by the credential holder.

(h) An agreement to participate in the procedure for a period of time as established by the board.

(2) The board liaison may include additional requirements for an individual credential holder, if the circumstances of the informal complaint or the credential holder's condition warrant additional safeguards.

(3) The board or board liaison may include a promise of confidentiality that all or certain records shall remain closed and not available for public inspection and copying.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. (1) (a) to (g) and (2), Register, July, 1996, No. 487, eff. 8-1-96; am. (1) (d), Register, January, 2001, No. 541, eff. 2-1-01.

RL 7.06 Standards for approval of treatment facilities or individual therapists. (1) The board or board liaison shall approve a treatment facility designated by a credential holder for the purpose of participation in the procedure if:

- (a) The facility is certified by appropriate national or state certification agencies.
- (b) The treatment program focus at the facility is on the individual with drug and alcohol abuse problems.
- (c) Facility treatment plans and protocols are available to the board liaison and coordinator.
- (d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(2) As an alternative to participation by means of a treatment facility, a credential holder may designate an individual therapist for the purpose of participation in the procedure. The board liaison shall approve an individual therapist who:

- (a) Has credentials and experience determined by the board liaison to be in the credential holder's area of need.
- (b) Agrees to perform an appropriate assessment of the credential holder's therapeutic needs and to establish and implement a comprehensive treatment regimen for the credential holder.
- (c) Forwards copies of the therapist's treatment regimen and office protocols to the coordinator.
- (d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(3) If a board liaison does not approve a treatment facility or therapist as requested by the credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. Register, July, 1996, No. 487, eff. 8-1-96; r. (1) (d) and (2) (d), renum. (1) (e) and (2) (e) to be (1) (d) and (2) (d) and am., Register, January, 2001, No. 541, eff. 2-1-01.

RL 7.07 Intradepartmental referral. (1) A credential holder who contacts the department and requests to participate in the procedure shall be referred to the board liaison and the coordinator for determination of acceptance into the procedure.

(2) The division may refer individuals named in informal complaints to the board liaison for acceptance into the procedure.

(3) The board liaison may refer cases involving the following to the division for investigation or prosecution:

(a) Credential holders participating in the procedure who are dismissed for failure to meet the requirements of their rehabilitation program or who otherwise engage in behavior which should be referred to prevent harm to the public.

(b) Credential holders who apply and who are determined to be ineligible for the procedure where the board liaison is in possession of information indicating a violation of law.

(c) Credential holders who do not complete an agreement for participation where the board liaison is in possession of information indicating a violation of law.

(d) Credential holders initially referred by the division to the board liaison who fail to complete an agreement for participation.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am.(1), (3) (a) to (d), Register, July, 1996, No. 487, eff. 8-1-96.

RL 7.08 Records. (1) **CUSTODIAN** All records relating to the procedure including applications for participation, agreements for participation and reports of participation shall be maintained in the custody of the department secretary or the secretary's designee.

(2) **AVAILABILITY OF PROCEDURE RECORDS FOR PUBLIC INSPECTION** Any requests to inspect procedure records shall be made to the custodian. The custodian shall evaluate each request on a case by case basis using the applicable law relating to open records and giving appropriate weight to relevant factors in order to determine whether public interest in nondisclosure outweighs the public interest in access to the records, including the reputational interests of the credential holder, the importance of confidentiality to the functional integrity of the procedure, the existence of any pledge of confidentiality, statutory or common law rules which accord a status of confidentiality to the records and the likelihood that release of the records will impede an investigation.

(3) **TREATMENT RECORDS.** Treatment records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437, Stats., and their staffs and by treatment facilities are confidential under s. 51.30, Stats., and shall not be made available for public inspection.

(4) **PATIENT HEALTH CARE RECORDS.** Patient health care records are confidential under s. 146.82, Stats., and shall not be made available to the public without the informed consent of the patient or of a person authorized by the patient or as provided under s. 146.82(2), Stats.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am.(2), Register, July, 1996, No. 487, eff. 8-1-96.

RL 7.09 Report. The board liaison or coordinator shall report on the procedure to the board at least twice a year and if requested to do so by a board.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. Register, July, 1996, No. 487, eff. 8-1-96.

RL 7.10 Applicability of procedure to direct licensing by the department. This procedure may be used by the department in resolving complaints against persons licensed directly by the department if the department has authority to discipline the credential holder. In such cases, the department secretary shall have the authority and responsibility of the "board" as the

term is used in the procedure and shall designate an employee to perform the responsibilities of the "board liaison."

History: Cr. Register, January, 1991, No. 471, eff. 2-1-91; am. Register, July, 1996, No. 487, eff. 8-1-96.

RL 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credential holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders, or pursuant to disciplinary orders. To be approved as a drug testing program for the department, programs shall satisfactorily meet all of the following standards in the areas of program administration, collection site administration, laboratory requirements and reporting requirements:

(1) Program administration requirements are:

(a) The program shall enroll participants by setting up an account, establishing a method of payment and supplying pre-printed chain-of-custody forms.

(b) The program shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

(c) Random selection of days when participants shall provide specimens shall begin upon enrollment and the program shall notify designated department staff that selection has begun.

(d) The program shall maintain a nationwide 800 number or an internet website that is operational 24 hours per day, 7 days per week to inform participants of when to provide specimens.

(e) The program shall maintain and make available to the department through an internet website data that are updated on a daily basis verifying the date and time each participant was notified after random selection to provide a specimen, the date, time and location each specimen was collected, the results of drug screen and whether or not the participant complied as directed.

(f) The program shall maintain internal and external quality of test results and other services.

(g) The program shall maintain the confidentiality of participants in accordance with s. 146.82, Stats.

(h) The program shall inform participants of the total cost for each drug screen including the cost for program administration, collection, transportation, analysis, reporting and confirmation. Total cost shall not include the services of a medical review officer.

(i) The program shall immediately report to the department if the program, laboratory or any collection site fails to comply with this section. The department may remove a program from the approved list if the program fails to comply with this section.

(j) The program shall make available to the department experts to support a test result for 5 years after the test results are released to the department.

(k) The program shall not sell or otherwise transfer or transmit names and other personal identification information of the participants to other persons or entities without permission from the department. The program shall not solicit from participants presently or formerly in the monitoring program or otherwise contact participants except for purposes consistent with administering the program and only with permission from the department.

(L) The program and laboratory shall not disclose to the participant or the public the specific drugs tested.

(2) Collection site administration requirements are:

(a) The program shall locate, train and monitor collection sites for compliance with the U.S. department of transportation collection protocol under 49 CFR 40.

(b) The program shall require delivery of specimens to the laboratory within 24 hours of collection.

(3) Laboratory requirements are:

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(a) The program shall utilize a laboratory that is certified by the U.S. department of health and human services, substance abuse and mental health services administration under 49 CFR 40. If the laboratory has had adverse or corrective action, the department shall evaluate the laboratory's compliance on a case by case basis.

(b) The program shall utilize a laboratory capable of analyzing specimens for drugs specified by the department.

(c) Testing of specimens shall be initiated within 48 hours of pickup by courier.

(d) All positive drug screens shall be confirmed utilizing gas chromatography in combination with mass spectrometry, mass spectrometry, or another approved method.

(e) The laboratory shall allow department personnel to tour facilities where participant specimens are tested.

(4) The requirements for reporting of results are:

(a) The program shall provide results of each specimen to designated department personnel within 24 hours of processing.

(b) The program shall inform designated department personnel of confirmed positive test results on the same day the test results are confirmed or by the next business day if the results are confirmed after hours, on the weekend or on a state or federal holiday.

(c) The program shall fax, e-mail or electronically transmit laboratory copies of drug test results at the request of the department.

(d) The program shall provide a medical review officer upon request and at the expense of the participant, to review disputed positive test results.

(e) The program shall provide chain-of-custody transfer of disputed specimens to an approved independent laboratory for retesting at the request of the participant or the department.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01.

Chapter RL 7

APPENDIX I

CONSENT FOR RELEASE OF INFORMATION

I, (#1), hereby authorize (#2) to provide the board liaison for the Department of Regulation and Licensing Impaired Professionals Procedure, P.O. Box 8935, Madison, Wisconsin 53708, or persons designated by the board liaison who are directly involved in administration of the procedure with (#3). I further authorize (#4) to discuss with the board liaison or the board liaison's designee any matter relating to the records provided and to allow the board liaison or the board liaison's designee to examine and copy any records or information relating to me.

I hereby also authorize the board liaison or the board liaison's designee to provide (#5) with copies of any information provided to the board liaison pursuant to this consent for release of information authorizing the release of information to the board liaison from those persons and institutions.

In the event of my dismissal from the Impaired Professionals Procedure, I hereby also authorize the board liaison or the board liaison's designee to provide the Division of Enforcement with the results of any investigation conducted in connection with my application to participate in the Impaired Professionals Procedure and with any documentation, including patient health care records, evidencing my failure to meet participation requirements.

This consent for release of information is being made for the purposes of monitoring my participation in the Impaired Professionals Procedure, and any subsequent procedures before the Wisconsin (#6); and for the further purpose of permitting exchange of information between the board liaison or the board liaison's designee and persons or institutions involved in my participation in the Impaired Professionals Procedure where such exchange is necessary in the furtherance of my treatment or to provide information to the Division of Enforcement in the event of my dismissal from the Impaired Professionals Procedure.

Unless revoked earlier, this consent is effective until (#7). I understand that I may revoke this consent at any time and that information obtained as a result of this consent may be used after

the above expiration date or revocation. A reproduced copy of this consent form shall be as valid as the original.

I understand that should I fail to execute this consent for release of information, I shall be ineligible to participate in the Impaired Professionals Procedure. I also understand that should I revoke this consent prior to completion of my participation in the Impaired Professionals Procedure, I will be subject to dismissal from the procedure.

I understand that the recipient of information provided pursuant to this Consent for Release of Information is not authorized to make any further disclosure of the information without my specific written consent, or except as otherwise permitted or required by law.

Dated this _____ day of _____, 19____.

Signature of JPP Participant Participant's Date of Birth

INSERTIONS

1. Participant
2. Persons and institutions provided with releases for provision of information to the department
3. Examples: Drug and alcohol treatment records
 Mental health/psychiatric treatment records
 Personnel records; work records
 Results of blood or urine screens
4. Persons or institutions given authorization
5. Persons or institutions given authorization in the first paragraph
6. Name of board
7. Date to which consent is effective

Chapter RL 8

ADMINISTRATIVE WARNINGS

RL 8.01	Authority and scope.	RL 8.05	Request for a review of an administrative warning.
RL 8.02	Definitions.	RL 8.06	Procedures.
RL 8.03	Findings before issuance of an administrative warning.	RL 8.07	Transcription fees.
RL 8.04	Issuance of an administrative warning.		

RL 8.01 Authority and scope. Rules in this chapter are adopted under the authority of s. 440.205, Stats., to establish uniform procedures for the issuance and use of administrative warnings.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

RL 8.02 Definitions. As used in s. 440.205, Stats., and in this chapter:

(1) “Credential” means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(2) “Department” means the department of regulation and licensing.

(3) “Disciplinary authority” means the department or an attached examining board, affiliated credentialing board or board having authority to reprimand a credential holder.

(4) “Division” means the division of enforcement in the department.

(5) “First occurrence” means any of the following:

(a) The credential holder has never been charged as a respondent in a formal complaint filed under cli. RL 2.

(b) Other than the matter pending before the disciplinary authority, no informal complaint alleging the same or similar misconduct has been filed with the department against the credential holder.

(c) The credential holder has not been disciplined by a disciplinary authority in Wisconsin or another jurisdiction.

(6) “Minor violation” means all of the following:

(a) No significant harm was caused by misconduct of the credential holder.

(b) Continued practice by the credential holder presents no immediate danger to the public.

(c) If prosecuted, the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.

(d) The complaint does not warrant use of prosecutorial resources.

(e) The credential holder has not previously received an administrative warning.

(7) “Misconduct” means a violation of a statute or rule related to the profession or other conduct for which discipline may be imposed under chs. 440 to 480, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

RL 8.03 Findings before issuance of an administrative warning. Before issuance of an administrative warning, a disciplinary authority shall make all of the following findings:

(1) That there is specific evidence of misconduct by the credential holder.

(2) That the misconduct is a first occurrence for the credential holder.

(3) That the misconduct is a minor violation of a statute or rule related to the profession or other conduct for discipline may be imposed.

(4) That issuance of an administrative warning will adequately protect the public.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

RL 8.04 Issuance of an administrative warning. (1) An administrative warning shall be substantially in the form shown in Appendix I.

(2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided by the credential holder to the department. Service by mail is complete on the date of mailing.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

RL 8.05 Request for a review of an administrative warning. A credential holder who has been issued an administrative warning may request the disciplinary authority to review the issuance of the administrative warning by filing a written request with the disciplinary authority within 20 days after the mailing of the administrative warning. The request shall be in writing and set forth:

(1) The credential holder’s name and address.

(2) The reason for requesting a review.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

RL 8.06 Procedures. The procedures for an administrative warning review are:

(1) Within 45 calendar days of receipt of a request for review, the disciplinary authority shall notify the credential holder of the time and place of the review.

(2) No discovery is permitted. A credential holder may inspect records under s. 19.35, Stats., the public records law.

(3) The disciplinary authority or its designee shall preside over the review. The review shall be recorded by audiotape unless otherwise specified by the disciplinary authority.

(4) The disciplinary authority shall provide the credential holder with an opportunity to make a personal appearance before the disciplinary authority and present a statement. The disciplinary authority may request the division to appear and present a statement on issues raised by the credential holder. The disciplinary authority may establish a time limit for making a presentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shall be 20 minutes.

(5) If the credential holder fails to appear for a review, or withdraws the request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without further action.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

RL 8.07 Transcription fees. (1) The fee charged for a transcript of a review under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

DEPARTMENT OF REGULATION AND LICENSING

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of \$1.75 per page and a copying charge of \$.25 per page. If 2 or more persons request a transcript, ~~the~~ department shall charge each requester a copying fee of \$.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its ~~own~~ use prior to the time a request is made, the department shall

assume the transcription fee, but shall charge a copying fee of \$.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall ~~be~~ furnished with a transcript without charge upon the filing of a petition of indigence signed under oath.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

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Chapter RL 8

APPENDIX I

DEPARTMENT OF REGULATION AND LICENSING

[DISCIPLINARY AUTHORITY]

ADMINISTRATIVE WARNING

This administrative warning is issued by the {disciplinary authority} to {credentialholder} pursuant to s. 440.205, Stats. The {disciplinary authority} makes the following findings:

- 1) That there is evidence of professional misconduct by (credential holder), to wit:
- 2) That this misconduct is a first occurrence for {credentialholder}.
- 3) That this misconduct is a minor violation of {statute or rule}.
- 4) That issuance of this administrative warning will adequately protect the public and no further action is warranted.

Therefore, the {disciplinary authority} issues this administrative warning and hereby puts the {credential holder} on notice that any subsequent violation may result in disciplinary action. The investigation of this matter is hereby closed.

Date: _____

Signature of authorized representative
For {Disciplinary Authority}

Right to Review

You may obtain a review of this administrative warning by filing a written request with the (disciplinary authority) within 20 days of mailing of this warning. The review will offer the credential holder an opportunity to make a personal appearance before the {disciplinary authority}.

The record that this administrative warning was issued is a public record.

The content of this warning is private and confidential.

Chapter RL 9

DENIAL OF RENEWAL APPLICATION BECAUSE
APPLICANT IS LIABLE FOR DELINQUENT TAXES

RL 9.01 Authority.
RL 9.02 Scope; nature of proceedings
RL 9.03 Definitions.

RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes.
RL 9.05 Denial of renewal.

RL 9.01 Authority. The rules in ch. RL 9 are adopted under the authority in s. 440.03, Stats.

History: Emerg. cr. eff. 11-14-96; Cr. Register, August, 1996, No. 488, eff. 9-1-96.

RL 9.02 Scope; nature of proceedings. The rules in this chapter govern the procedures for requesting the Wisconsin department of revenue to certify whether an applicant is liable for delinquent taxes owed to this state under s. 440.08 (4) (b), Stats., as created by 1995 Wis. Act 27 and amended by 1995 Wis. Act 233, to review denial of an application for renewal because the applicant is liable for delinquent taxes.

History: Emerg. cr. eff. 11-14-96; Cr. Register, August, 1996, No. 488, eff. 9-1-96.

RL 9.03 Definitions. In this chapter:

(1) "Applicant" means a person who applies for renewal of a credential. "Person" in this subsection includes a business entity.

(2) "Credential" has the meaning in s. 440.01 (2) (a), Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Liable for any delinquent taxes owed to this state" has the meaning set forth in s. 73.0301 (1) (c), Stats.

History: Emerg. cr. eff. 11-14-96; Cr. Register, August, 1996, No. 488, eff. 9-1-96; correction in (4) made under s. 13.93 (2m) (b) 7., Stats.

RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes. (1) **RENEWAL APPLICATION FORM.** If the department receives a renewal application that does not include the information required by s. 440.08 (2g) (b), Stats., the application shall be denied unless the applicant provides the missing information within 20 days after the department first received the application.

Note: 1997 Wis. Act 191 repealed s. 440.08 (2g) (b), Stats.

(2) **SCREENING FOR LIABILITY FOR DELINQUENT TAXES.** The name and social security number or federal employer identification number of an applicant shall be compared with information at the Wisconsin department of revenue that identifies individuals and organizations who are liable for delinquent taxes owed to this state.

(3) **NOTICE OF INTENT TO DENY BECAUSE OF TAX DELINQUENCY.** If an applicant is identified as being liable for any delinquent taxes owed to this state in the screening process under sub. (2), the Wisconsin department of revenue shall mail a notice to the applicant at the last known address of the applicant according to s. 440.11, Stats., or to the address identified in the applicant's renewal application, if different from the address on file in the department. The notice shall state that the application for renewal submitted by the applicant shall be denied unless, within 10 days from the date of the mailing of the notice, the department of regulation and licensing receives a copy of a certificate of tax clearance issued by the Wisconsin department of revenue which shows that the applicant is not liable for delinquent state taxes or unless the Wisconsin department of revenue provides documentation to the department showing that the applicant is not liable for delinquent state taxes.

(4) **OTHER REASONS FOR DENIAL.** If the department determines that grounds for denial of an application for renewal may exist other than the fact that the applicant is liable for any delinquent taxes owed to this state, the department shall make a determination on the issue of tax delinquency before investigating other issues of renewal eligibility.

History: Emerg. cr. eff. 11-14-96; Cr. Register, August, 1996, No. 488, eff. 9-1-96.

RL 9.05 Denial of renewal. The department shall deny an application for credential renewal if the applicant fails to complete the information on the application form under s. RL 9.04 or if the Wisconsin department of revenue certifies or affirms its certification under s. 440.08 (4) (b) 3., Stats., that the applicant is liable for delinquent taxes and the department does not receive a current certificate of tax clearance or the Wisconsin department of revenue does not provide documentation showing that the applicant is not liable for delinquent taxes within the time required under s. RL 9.04 (2) and (3). The department shall mail a notice of denial to the applicant that includes a statement of the facts that warrant the denial under s. 440.08 (4) (b), Stats., and a notice that the applicant may file a written request with the department to have the denial reviewed at a hearing before the Wisconsin department of revenue.

Note: Section 440.08 (4) (b) 3., Stats., referred to here was repealed by 1997 Wis. Act 237 and a new, unrelated s. 440.08 (4) (b) recreated.

History: Emerg. cr. eff. 11-14-96; Cr. Register, August, 1996, No. 488, eff. 9-1-96.

Chapter HFS 145

CONTROL OF COMMUNICABLE DISEASES

Subchapter I — General Provisions

- HFS 145.01 Statutory authority.
 HFS 145.02 Purpose and scope.
 HFS 145.03 Definitions.
 HFS 145.04 Reports of communicable diseases.
 HFS 145.05 Investigation and control of communicable diseases.
 HFS 145.06 General statement of powers for control of communicable disease.
 HFS 145.07 Special disease control measures.

Subchapter II — Tuberculosis

- HFS 145.08 Definitions.
 HFS 145.09 Laboratory procedures.
 HFS 145.10 Restriction and management of patients and contacts.
 HFS 145.11 Discharge from isolation or confinement.

- HFS 145.12 Certification of public health dispensaries.
 HFS 145.13 Dispensary reimbursement.

Subchapter III — Sexually Transmitted Disease

- HFS 145.14 Definitions.
 HFS 145.15 Case reporting.
 HFS 145.16 Reporting of cases delinquent in treatment.
 HFS 145.17 Determination of sources and contacts.
 HFS 145.18 Criteria for determination of suspects
 HFS 145.19 Examination of suspects.
 HFS 145.20 Commitment of suspects.
 HFS 145.21 Treatment of minors.
 HFS 145.22 Treatment guidelines.

Note: Chapter HSS 145 was renumbered chapter HFS 145 under s. 13.93(2m)(b) 1., Stats., and corrections made under s. 13.93(2m)(b) 6. and 7., Stats., Register, June, 1997, No. 498.

Subchapter I — General Provisions

HFS 145.01 Statutory authority. This chapter is promulgated under the authority of ss. 252.02 (4), 252.06 (1), 252.07 (1p) and (11), 252.10 (1), 252.10 (6) (a) and (b), 252.11 (1) and (1m), 254.51 (3) and 990.01 (5g), Stats.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; corrections made under s. 13.93(2m)(b) 7., Stats., Register, August, 1995, No. 476; am. Register, March, 2000, No. 531, eff. 4-1-00; correction made under s. 13.93(2m)(b) 7., Stats., Register, March, 2002, No. 555; CR 01-105; am. Register March 2002 No. 555, eff. 4-1-02.

HFS 145.02 Purpose and scope. This chapter establishes a surveillance system for the purpose of controlling the incidence and spread of communicable diseases. This surveillance system consists of timely and effective communicable disease reporting, means of intervention to prevent transmission of communicable diseases, and investigation, prevention and control of outbreaks by local health officers and the department, and in addition provides information otherwise pertinent to understanding the burden of communicable disease on the general population.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-83; am. Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.03 Definitions. In this chapter:

- (1) "Advanced practice nurse prescriber" means an advanced practice nurse, as defined in s. N 8.02 (1), who under s. 441.16 (2), Stats., has been granted a certificate to issue prescription orders.
- (2) "Case" means a person determined to have a particular communicable disease on the basis of clinical or laboratory criteria or both.
- (3) "Chief medical officer" means the person appointed by the state health officer under s. 250.02 (2), Stats., to provide public health consultation and leadership in the program area of acute and communicable disease and who serves also as state epidemiologist for that program area.
- (4) "Communicable disease" means a disease or condition listed in Appendix A of this chapter.
- (5) "Control" means to take actions designed to prevent the spread of communicable diseases.
- (6) "Conveyance" means any publicly or privately owned vehicle used for providing transportation services.
- (7) "Date of onset" means the day on which the case or suspected case experienced the first sign or symptom of the communicable disease.
- (8) "Day care center" has the meaning prescribed in s. 48.65, Stats., and includes nursery schools that fit that definition.

(9) "Department" means the department of health and family services.

(10) "Food handler" means a person who handles food utensils or who prepares, processes or serves food or beverages for people other than members of his or her immediate household.

(11) "Health care facility" has the meaning prescribed in s. 155.01 (6), Stats., and includes providers of ambulatory health care.

(12) "HIV" means human immunodeficiency virus.

(13) "Individual case report form" means the form provided by the department for the purpose of reporting communicable diseases.

(14) "Investigation" means a systematic inquiry designed to identify factors which contribute to the occurrence and spread of communicable diseases.

(15) "Laboratory" means any facility certified under 42 USC 263a.

(16) "Local health department" means an agency of local government that takes any of the forms specified in s. 250.01(4), Stats.

(17) "Local health officer" has the meaning prescribed in s. 250.01 (5), Stats., and applies to the person who is designated as the local health officer for the place of residence of a case or suspected case of communicable disease.

(18) "Organized program of infection control" means written and implemented policies and procedures for the purpose of surveillance, investigation, control and prevention of infections in a health care facility.

(19) "Other disease or condition having the potential to affect the health of other persons" means a disease that can be transmitted from one person to another but that is not listed in Appendix A of this chapter and therefore is not reportable under this chapter, although it is listed in *Control of Communicable Diseases Manual*, 16th edition (1995), edited by Abram S. Benenson, and published by the American Public Health Association.

Note: The handbook, *Control of Communicable Diseases Manual*, 16th edition (1995), edited by Abram S. Benenson, is on file in the Department's Division of Public Health, the Revisor of Statutes Bureau and the Secretary of State's Office, and is available for purchase from the American Public Health Association, 1015 Fifteenth St., NW, Washington, D.C., 20005.

(20) "Outbreak" means the occurrence of communicable disease cases, in a particular geographical area of the state, in excess of the expected number of cases.

(21) "Personal care" means the service provided by one person to another person who is not a member of his or her immediate household for the purpose of feeding, bathing, dressing, assisting with personal hygiene, changing diapers, changing bedding and other services involving direct physical contact.

(22) "Physician" means an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the medical examining board, and holding a license granted by the board under s. 445.01 (5), Stats.

(23) "Public building" means any privately or publicly owned building which is open to the public.

(24) "Public health intervention" means an action designed to promote and protect the health of the public.

(25) "State epidemiologist" means the person appointed by the state health officer under s. 250.02 (1), Stats., to be the person in charge of communicable disease control for the state who serves also as chief medical officer for the acute and communicable disease program area.

(26) "Surveillance" means the systematic collection of data pertaining to the occurrence of specific diseases, the analysis and interpretation of these data and the dissemination of consolidated and processed information to those who need to know.

(27) "Suspected case" means a person thought to have a particular communicable disease on the basis of clinical or laboratory criteria or both.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; am. (2) and (11), Register, February, 1989, No. 398, eff. 3-1-89; correction in (8) and (9) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; r. and recr. Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.04 Reports of communicable diseases.

(1) **RESPONSIBILITY FOR REPORTING.** (a) Any person licensed under ch. 441 or 448, Stats., knowing of or in attendance on a case or suspected case shall notify the local health officer or, if required under Appendix A of this chapter, the state epidemiologist, in the manner prescribed in this section.

(b) Each laboratory shall report the identification or suspected identification of a disease-causing organism or laboratory findings indicating the presence of a communicable disease to the local health officer or, if required under Appendix A of this chapter, to the state epidemiologist.

(c) Each health care facility shall ensure that reports are made to the local health officer or, if required under Appendix A of this chapter, to the state epidemiologist, in the manner specified in sub. (3). When a case is identified or suspected in a health care facility having an organized program of infection control, the person in charge of the infection control program shall ensure that the case or suspected case is reported to the local health officer or, if required under Appendix A of this chapter, to the state epidemiologist, minimizing unnecessary duplication.

(d) Any teacher, principal or nurse serving a school or day care center knowing of a case or suspected case in the school or center shall notify the local health officer or, if required under Appendix A of this chapter, the state epidemiologist, in the manner prescribed in this section.

(e) Any person who knows or suspects that a person has a communicable disease shall report the facts to the local health officer or, if required under Appendix A of this chapter, to the state epidemiologist.

(g) Nothing in this subsection lessens the requirement for confidentiality of HIV test results under s. 252.15, Stats.

(2) **CONTENT OF REPORT.** (a) Each report under sub. (1) (a) to (d) of a case or suspected case of a communicable disease to the local health officer or the state epidemiologist shall include the name and address of the person reporting and of the attending physician, if any, the diagnosed or suspected disease, the name of the ill or affected individual, that individual's address and telephone number, age or date of birth, race and ethnicity, sex, county of residence, date of onset of the disease, name of parent or guardian if a minor, and other facts the department or local health officer requires for the purposes of surveillance, control and prevention of communicable disease.

(b) Reports may be written or verbal. Written reports shall be on the individual case report form provided by the department and distributed by the local health officer or on a form containing the information required under par. (a). Reports shall be submitted to the local health officer or, if required under Appendix A of this chapter, to the state epidemiologist.

(c) Reports by laboratories of the identification or suspected identification of a disease-causing organism or laboratory findings indicating the presence of a communicable disease shall be made to the local health officer or, if required under Appendix A of this chapter, to the state epidemiologist. These reports shall include the name of the individual affected or ill, the individual's address, telephone number, county of residence, age or date of birth, the name of the attending physician and the identity or suspected identity of the organism or the laboratory findings.

(d) All information provided under this subsection shall remain confidential except as may be needed for the purposes of investigation, control and prevention of communicable diseases.

(3) **URGENCY OF REPORTS.** (a) A person, laboratory or health care facility required to report under sub. (1) shall report communicable diseases of urgent public health importance as listed in category I of Appendix A of this chapter to the local health officer immediately upon identification of a case or suspected case. If the local health officer is unavailable, the report shall be made immediately to the state epidemiologist.

(b) A person, laboratory or health care facility required to report under sub. (1) shall report communicable diseases of less urgent public health importance as listed in categories II and III of Appendix A of this chapter to the local health officer or, if required under Appendix A, to the state epidemiologist, by individual case report form or by telephone within 72 hours of the identification of a case or suspected case.

(c) A person, laboratory or health care facility required to report under sub. (1) shall report the total number of cases or suspected cases of the other communicable diseases listed in Appendix A to the local health officer on a weekly basis.

(4) **HANDLING OF REPORTS BY THE LOCAL HEALTH OFFICER.** (a) The local health officer shall notify the state epidemiologist immediately of any cases or suspected cases reported under sub. (3) (a).

(b) At the close of each week, the local health officer shall notify the state epidemiologist in writing on a form provided by the department of all cases of reported diseases listed in Appendix A.

(c) Local health departments serving jurisdictions within the same county may, in conjunction with the department, establish a combined reporting system to expedite the reporting process.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; am. (1), (2) (a) to (c), (3) (a) and (b), cr. (1m), Register, February, 1989, No. 398, eff. 3-1-89; correction in (1m) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; renum. and am. (1m) to be (1) (g), am. (3) (a), (4) (a) and cr. (4) (c), Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.05 Investigation and control of communicable diseases.

(1) The local health officer shall use all reasonable means to confirm in a timely manner any case or suspected case of a communicable disease and shall ascertain so far as possible all sources of infection and exposures to the infection. Follow-up and investigative information shall be completed by the local health officer and reported to the state epidemiologist on forms provided by the department.

(2) Local health officers shall follow the methods of control set out in section 9 under each communicable disease listed in the 16th edition (1995) of *Control of Communicable Diseases Manual*, edited by Abram S. Benenson, published by the American Public Health Association, unless specified otherwise by the state epidemiologist. Specific medical treatment shall be prescribed by a physician or an advanced practice nurse prescriber.

(3) Any person licensed under ch. 441 or 448, Stats., attending a person with a communicable disease shall instruct the person in the applicable methods of control contained in *Control of Communicable Diseases Manual*, 16th edition (1995), edited by Abrani S. Benenson, published by the American Public Health Association, unless specified otherwise by the state epidemiologist, and shall cooperate with the local health officer and the department in their investigation and control procedures.

(4) The department in cooperation with the local health officer shall institute special disease surveillances, follow-up reports and control measures consistent with contemporary epidemiologic practice in order to study and control any apparent outbreak or unusual occurrence of communicable diseases.

Note: The handbook, *Control of Communicable Diseases Manual*, 16th edition (1995), edited by Abram S. Benenson, is on file in the Department's Division of Public Health, the Revisor of Statutes Bureau and the Secretary of State's Office, and is available for purchase from the American Public Health Association, 1015 Fifteenth St., NW, Washington, DC 20005.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; am. (2) and (3), Register, February, 1989, No. 398, eff. 3-1-89; am. (2) and (3), Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.06 General statement of powers for control of communicable disease. (1) **APPLICABILITY.** The general powers under this section apply to all communicable diseases listed in Appendix A of this chapter and any other infectious disease which the chief medical officer deems poses a threat to the citizens of the state.

(2) **PERSONS WHOSE SUBSTANTIATED CONDITION POSES A THREAT TO OTHERS.** A person may be considered to have a contagious medical condition which poses a threat to others if that person has been medically diagnosed as having any communicable disease and exhibits any of the following:

(a) A behavior which has been demonstrated epidemiologically to transmit the disease to others or which evidences a careless disregard for the transmission of the disease to others.

(b) Past behavior that evidences a substantial likelihood that the person will transmit the disease to others or statements of the person that are credible indicators of the person's intent to transmit the disease to others.

(c) Refusal to complete a medically directed regimen of examination and treatment necessary to render the disease non-contagious.

(d) A demonstrated inability to complete a medically directed regimen of examination and treatment necessary to render the disease noncontagious, as evidenced by any of the following:

1. A diminished capacity by reason of use of mood-altering chemicals, including alcohol.

2. A diagnosis as having significantly below average intellectual functioning.

3. An organic disorder of the brain or a psychiatric disorder of thought, mood, perception, orientation or memory.

4. Being a minor, or having a guardian appointed under ch. 880, Stats., following documentation by a court that the person is incompetent.

(e) Misrepresentation by the person of substantial facts regarding the person's medical history or behavior, which can be demonstrated epidemiologically to increase the threat of transmission of disease.

(9) Any other willful act or pattern of acts or omission or course of conduct by the person which can be demonstrated epidemiologically to increase the threat of transmission of disease to others.

(3) **PERSONS WHOSE SUSPECTED CONDITION POSES A THREAT TO OTHERS.** A person may be suspected of harboring a contagious medical condition which poses a threat to others if that person exhibits any of the factors noted in sub. (2) and, in addition, demonstrates any of the following without medical evidence which refutes it:

(a) Has been linked epidemiologically to exposure to a known case of communicable disease.

(b) Has clinical laboratory findings indicative of a communicable disease.

(c) Exhibits symptoms that are medically consistent with the presence of a communicable disease.

(4) **AUTHORITY TO CONTROL COMMUNICABLE DISEASES.** When it comes to the attention of an official empowered under s. 250.02 (1), 250.04 (1) or 252.02 (4) and (6), Stats., or under s. 252.03 (1) and (2), Stats., that a person is known to have or is suspected of having a contagious medical condition which poses a threat to others, the official may direct that person to comply with any of the following, singly or in combination, as appropriate:

(a) Participate in a designated program of education or counseling.

(b) Participate in a defined program of treatment for the known or suspected condition.

(c) Undergo examination and tests necessary to identify a disease, monitor its status or evaluate the effects of treatment on it.

(d) Notify or appear before designated health officials for verification of status, testing or direct observation of treatment.

(e) Cease and desist in conduct or employment which constitutes a threat to others.

(9) Reside part-time or full-time in an isolated or segregated setting which decreases the danger of transmission of the communicable disease.

(g) Be placed in an appropriate institutional treatment facility until the person has become noninfectious.

(5) **FAILURE TO COMPLY WITH DIRECTIVE.** When a person fails to comply with a directive under sub. (4), the official who issued the directive may petition a court of record to order the person to comply. In petitioning a court under this subsection, the petitioner shall ensure all of the following:

(a) That the petition is supported by clear and convincing evidence of the allegation.

(b) That the respondent has been given the directive in writing, including the evidence that supports the allegation, and has been afforded the opportunity to seek counsel.

(c) That the remedy proposed is the least restrictive on the respondent which would serve to correct the situation and to protect the public's health.

(6) **HAZARDS TO HEALTH.** Officials empowered under ss. 250.02 (1), 250.04 (1) and 252.02 (4) and (6), Stats., or under s. 252.03 (1) and (2), Stats., may direct persons who own or supervise real or physical property or animals and their environs, which present a threat of transmission of any communicable disease under sub. (1), to do what is reasonable and necessary to abate the threat of transmission. Persons failing or refusing to comply with a directive shall come under the provisions of sub. (5) and this subsection.

History: Cr. Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.07 Special disease control measures.

(1) **SCHOOLS AND DAY CARE CENTERS.** Any teacher, principal, director or nurse serving a school or day care center may send home, for the purpose of diagnosis and treatment, any pupil suspected of having a communicable disease or of having any other disease or condition having the potential to affect the health of other students and staff including but not limited to pediculosis and scabies. The teacher, principal, director or nurse authorizing the action shall ensure that the parent, guardian or other person legally responsible for the child or other adult with whom the child resides and the nurse serving the child's school or day care center are immediately informed of the action. A teacher who sends a pupil home shall also notify the principal or director of the action.

(2) **PERSONAL CARE.** Home health agency personnel providing personal care in the home and persons providing personal care in

health care facilities, day care centers and other comparable facilities shall refrain from providing care while they are able to transmit a communicable disease through the provision of that care, in accord with the methods of communicable disease control contained in Centers for Disease Control and Prevention, "Guideline for Infection Control in Health Care Personnel, 1998," unless specified otherwise by the state epidemiologist.

Note: The publication, Centers for Disease Control and Prevention, "Guideline for Infection Control in Health Care Personnel, 1998," is on file in the Department's Division of Public Health, the Revisor of Statutes Bureau and the Secretary of State's Office, and is available for purchase from the National Technical Information Service (NTIS), U.S. Dept. of Commerce, 5285 Port Royal Road, Springfield, VA 22161, (703) 486-4650.

(3) FOOD HANDLERS. Food handlers shall refrain from handling food while they have a disease in a form that is communicable by food handling, in accord with the methods of communicable disease control contained in *Control of Communicable Diseases Manual*, 16th edition (1995), edited by Abram S. Benenson, and published by the American Public Health Association, unless specified otherwise by the state epidemiologist.

Note: The handbook, *Control of Communicable Disease Manual*, 16th edition (1995), edited by Abram S. Benenson, is on file in the Department's Division of Public Health, the Revisor of Statutes Bureau and the Secretary of State's Office, and is available for purchase from the American Public Health Association, 1015 Fifteenth St., NW, Washington D.C. 20005.

(4) PREVENTION OF OPHTHALMIA NEONATORUM. The attending physician or midwife shall ensure placement of 2 drops of a one percent solution of silver nitrate, or a 1-2 centimeter ribbon of an ophthalmic ointment containing 0.5% erythromycin or one percent tetracycline, in each eye of a newborn child as soon as possible after delivery but not later than one hour after delivery. No more than one newborn child may be treated from an individual container.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; r. and recr. (4), Register, November, 1984, No. 347, eff. 12-1-84; am. (1) to (3), Register, February, 1989, No. 398, eff. 3-1-89; renum. from HFS 145.06 and am., Register, March, 2000, No. 531, eff. 4-1-00.

Subchapter II — Tuberculosis

HFS 145.08 Definitions. In this subchapter:

(1) "Case management" means the creation and implementation of an individualized treatment plan for a person with tuberculosis infection or disease that ensures that the person receives appropriate treatment and support services in a timely, effective, and coordinated manner.

(2) "Confinement" means the restriction of a person with tuberculosis to a specified place in order to prevent the transmission of the disease to others, to prevent the development of drug-resistant organisms or to ensure that the person receives a complete course of treatment.

(3) "Contact" means a person who shares air with a person who has infectious tuberculosis.

(4) "Contact investigation" means the process of identifying, examining, evaluating and treating a person at risk of infection with *Mycobacterium tuberculosis* due to recent exposure to infectious tuberculosis or suspected tuberculosis.

(5) "Directly observed therapy" means the ingestion of prescribed anti-tuberculosis medication that is observed by a health care worker or other responsible person acting under the authority of the local health department.

(6) "Infectious tuberculosis" means tuberculosis disease of the respiratory tract capable of producing infection or disease in others, as demonstrated by the presence of acid-fast bacilli in the sputum or bronchial secretions, or by radiographic and clinical findings.

(7) "Isolate" means a population of *Mycobacterium tuberculosis* bacteria that has been obtained in pure culture medium.

(8) "Isolation" means the separation of persons with infectious tuberculosis from other persons, in a place and under conditions that will prevent transmission of the infection.

(9) "Licensed prescriber" means an advanced practice nurse prescriber, a physician assistant, or other person licensed to prescribe medication under Wisconsin law.

(10) "Public health dispensary" means a program of a local health department or group of local health departments to prevent and control tuberculosis disease and infection by the identification, medical evaluation, treatment and management of persons at risk for tuberculosis infection or disease.

(11) "Repository" means a central location at the Wisconsin State Laboratory of Hygiene for receipt and storage of patient isolates of *Mycobacterium tuberculosis*.

(12) "Sputum conversion" means the conversion of serial sputum cultures for *Mycobacterium tuberculosis* from positive to negative, in response to effective treatment.

(13) "Suspected tuberculosis" means an illness marked by symptoms, signs, or laboratory tests that may be indicative of infectious tuberculosis such as prolonged cough, prolonged fever, hemoptysis, compatible radiographic findings or other appropriate medical imaging findings.

(14) "Tuberculosis disease" means an illness determined by clinical or laboratory criteria or both to be caused by *Mycobacterium tuberculosis*.

(15) "Tuberculosis infection" means an infection with *Mycobacterium tuberculosis* in a person who has no symptoms of tuberculosis disease and is not infectious.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; r. and recr. Register, March, 2000, No. 531, eff. 4-1-00; CR 01-105: r. and recr. Register March 2002 No. 555, eff. 4-1-02.

HFS 145.09 Laboratory procedures. **(1)** Any laboratory that receives a specimen for tuberculosis testing shall report all positive results as specified in s. HFS 145.04, including those obtained by an out-of-state laboratory, to the local health officer and to the department. The laboratory shall also submit an isolate from a patient with a positive culture to the state repository.

Note: Isolates for the state repository should be sent to: Mycobacteriology Laboratory, State Laboratory of Hygiene, Room 121, 465 Henry Mall, Madison, WI 53706.

(2) Any laboratory that performs primary culture for mycobacteria shall perform organism identification using an approved rapid testing procedure specified in the official statement of the Association of Public Health Laboratories, unless specified otherwise by the state epidemiologist. The laboratory shall ensure that at least 80% of culture-positive specimens are reported as either *Mycobacterium tuberculosis* complex or not *Mycobacterium tuberculosis* complex within 21 calendar days of the laboratory's receipt of the specimens.

Note: The official statement of the Association of Public Health Laboratory entitled "Mycobacterium tuberculosis: assessing your laboratory" is on file in the Revisor of Statutes Bureau and the Secretary of State's Office, and is available from the Department's Division of Public Health, P.O. Box 2659, Madison, WI 53701-2659.

(3) Any laboratory that identifies *Mycobacterium tuberculosis* shall ensure that antimicrobial drug susceptibility tests are performed on all initial isolates. The laboratory shall report the results of these tests to the local health officer or the department.

Note: Reports may be submitted to the Department's Division of Public Health, P.O. Box 2659, Madison, WI 53701-2659.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; am. (1), Register, February, 1989, No. 398, eff. 3-1-89; r. and recr. Register, March, 2000, No. 531, eff. 4-1-00; CR 01-105: r. and recr. Register March 2002 No. 555, eff. 4-1-02.

HFS 145.10 Restriction and management of patients and contacts. **(1)** All persons with infectious tuberculosis or suspected tuberculosis, and their contacts, shall exercise all reasonable precautions to prevent the infection of others, under the methods of control set out in section 9 under tuberculosis, pages 525 to 530, listed in the 17th edition (2000) of *Control of Communicable Diseases Manual*, edited by James Chin, published by the American Public Health Association, unless specified otherwise by the state epidemiologist.

Note: The handbook *Control of Communicable Diseases Manual*, 17th edition (2000), edited by James Chin, is on file in the Revisor of Statutes Bureau and the Secretary of State's Office, and is available for purchase from the American Public Health Association, 8001 Street, NW, Washington, DC 20001-3710.

(2) All persons with infectious tuberculosis or suspected tuberculosis shall be excluded from work, school and other premises that cannot be maintained in a manner adequate to protect others from being exposed to tuberculosis, as determined by the local health officer.

(3) Official statements of the American Thoracic Society shall be considered in the treatment of tuberculosis, unless specified otherwise by the state epidemiologist. Specific medical treatment shall be prescribed by a physician or other licensed prescriber.

Note: The official statements of the American Thoracic Society may be found in the Centers for Disease Control and Prevention's recommendations and report "Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection." The report may be found in the *Morbidity and Mortality Weekly Report*, June 9, 2000, Vol. 49, No. RR-6. The American Thoracic Society's "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children" may be found in the *American Journal of Respiratory and Critical Care Medicine*, vol. 149, 1994, pp. 1359-1374. These reports are on file in the Revisor of Statutes Bureau and the Secretary of State's Office, and are available from the Department's Division of Public Health, P.O. Box 2659, Madison, WI 53701-2659.

(4) (a) Any physician or licensed prescriber who treats a person with tuberculosis disease shall report all of the following to the local health officer:

1. The date of the person's sputum conversion.
2. The date of the person's completion of the tuberculosis treatment regimen.

(b) The physician or his or her designee shall immediately report to the local health officer when a person with tuberculosis disease does any of the following:

1. Terminates treatment against medical advice.
2. Fails to comply with the medical treatment plan.
3. Fails to comply with measures to prevent transmission.
4. Leaves the hospital against the advice of a physician.

(5) Upon receiving a report under sub. (4)(b), the local health officer shall immediately investigate and transmit the report to the department.

(6) The local health officer or the department may do any of the following:

- (a) Order a medical evaluation of a person.
- (b) Require a person to receive directly observed therapy.
- (c) Require a person to be isolated under ss. 252.06 and 252.07 (5), Stats.

(d) Order the confinement of a person if the local health officer or the department decides that confinement is necessary and all of the following conditions are met:

1. The department or local health officer notifies a court in writing of the confinement.
2. The department or local health officer provides to the court a written statement from a physician that the person has infectious tuberculosis or suspected tuberculosis.
3. The department or local health officer provides to the court evidence that the person has refused to follow a prescribed treatment regimen or, in the case of a person with suspected tuberculosis, has refused to undergo a medical examination under par. (a) to confirm whether the person has infectious tuberculosis.

4. In the case of a person with a confirmed diagnosis of infectious tuberculosis, the department or local health officer determines that the person poses an imminent and substantial threat to himself or herself or to the public health. The department or the local health officer shall provide to the court a written statement of that determination.

(e) If the department or local health officer orders the confinement of a person under par. (d), a law enforcement officer, or other person authorized by the local public health officer, shall transport the person, if necessary, to a location that the department or local

health officer determines will meet the person's need for medical evaluation, isolation and treatment.

(f) No person may be confined under par. (d) for more than 72 hours, excluding Saturdays, Sundays and legal holidays, without a court hearing under sub. (7) to determine whether the confinement should continue.

(7)(a) If the department or a local health officer wishes to confine a person for more than 72 hours, the department or a local health officer may petition any court for a hearing to determine whether a person with infectious or suspected tuberculosis should be confined for longer than 72 hours. The department or local health officer shall include in the petition documentation that demonstrates all the following:

1. The person named in the petition has infectious tuberculosis; the person has noninfectious tuberculosis but is at high risk of developing infectious tuberculosis; or that the person has suspected tuberculosis.

2. The person has failed to comply with the prescribed treatment regimen or with any rules promulgated by the department under s. 252.07 (11), Stats.; or that the disease is resistant to the medication prescribed to the person.

3. All other reasonable means of achieving voluntary compliance with treatment have been exhausted and no less restrictive alternative exists; or that no other medication to treat the resistant disease is available.

4. The person poses an imminent and substantial threat to himself or herself or to the public health.

(b) If the department or a local health officer petitions the court for a hearing under par. (a), the department or local health officer shall provide the person who is the subject of the petition written notice of a hearing at least 48 hours before a scheduled hearing is to be held. Notice of the hearing shall include all the following information:

1. The date, time and place of the hearing.
2. The grounds, and underlying facts, upon which confinement of the person is being sought.
3. An explanation of the person's rights under sub. (8).
4. The proposed actions to be taken and the reasons for each action.

(8) A person who is the subject of a petition for a hearing under sub. (6) (a) has the right to appear at the hearing, the right to present evidence and cross-examine witnesses and the right to be represented by counsel. At the time of the filing of the petition, the court shall assure that the person who is the subject of the petition is represented by counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1), Stats. If the person is a child, the court shall refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4), Stats. Unless good cause is shown, a hearing under this paragraph may be conducted by telephone or live audiovisual means, if available.

(9) An order issued by the court under sub. (6) (a) may be appealed as a matter of right. An appeal shall be heard within 30 days after the appeal is filed. An appeal does not stay the order.

(10) If the court orders confinement of a person under sub. (6) (a), the person shall remain confined until the department or local health officer, with the concurrence of a treating physician, determines that treatment is complete or that the person is no longer a substantial threat to himself or herself or to the public health. If the person is to be confined for more than 6 months, the court shall review the confinement every 6 months, beginning with the conclusion of the initial 6-month confinement period.

(11) (a) If the administrative officer of the facility where a person is isolated or confined has good cause to believe that the person may leave the facility, the officer shall use any legal means to restrain the person from leaving.

(b) The local health officer or a person designated by the local health officer shall monitor all persons under isolation or confinement as needed to ascertain that the isolation or Confinement is being maintained.

(c) The local health officer or a person designated by the local health officer shall monitor all persons with tuberculosis disease until treatment is successfully completed.

(12) The local health officer or the department may order an examination of a contact to detect tuberculosis. Contacts shall be reexamined at times and in a manner as the local health officer may require.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; r. and recr. Register, March, 2000, No. 531, eff. 4-1-00; CR **01-105**; r. and recr. Register **March 2002** No. 555, eff. 4-1-02..

HFS 145.11 Discharge from isolation or confinement. The local health officer or the department shall authorize the release of a person from isolation or confinement if all the following conditions are met:

(1) An adequate course of chemotherapy has been administered for a minimum of 2 weeks and there is clinical evidence of improvement, such as a decrease in symptom severity, radiographic findings indicating improvement, or other medical determination of improvement.

(2) Sputum or bronchial secretions are free of acid-fast bacilli.

(3) Specific arrangements have been made for post-isolation or post-confinement care.

(4) The person is considered by the local health officer or the department not to be a threat to the health of the general public and is likely to comply with the remainder of the treatment regimen.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; r. and recr. Register, March, 2000, No. 531, eff. 4-1-00; CR **01-105**; r. and recr. Register **March 2002** No. 555, eff. 4-1-02..

HFS 145.12 Certification of public health dispensaries. **(1)** A local health department or 2 or more local health departments jointly may be certified by the department as a public health dispensary under s. 252.10, Stats., if the public health dispensary provides or ensures provision of all of the following:

- (a) Tuberculin skin testing.
- (b) Medication for treatment of tuberculosis disease and infection.
- (c) Directly observed therapy.
- (d) Tuberculosis contact investigation.
- (e) Case management.
- (f) Sputum specimen collection and induction.
- (g) Medical evaluation by a physician or nurse.
- (h) Chest radiographs.
- (i) Collection of serologic specimens.

(2) A local health department that meets the requirements under sub. (1) and wishes to be certified as a public health dispensary shall submit a request for certification to the department. The request for certification shall include a list of the tuberculosis-related services provided or arranged for and a plan for tuberculosis prevention and control at the local level, including tuberculin skin testing of high-risk groups as defined by the Centers for Disease Control and Prevention.

Note: "High-risk groups" are defined in the Centers for Disease Control and Prevention report, "Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection." The report may be found in the Morbidity and Mortality Weekly Report, June 9, 2000, Vol. 49, No. RR-6, and is on file in the Revisor of Statutes Bureau, the Secretary of State's Office, and is available from the Department's Division of Public Health, P.O. Box 2659, Madison, WI 53701-2659.

(3) Upon authority of s. 252.10, Stats., the department shall review the request for certification as a public health dispensary and the related local health department operations within 6 months of receiving the application. The department shall either issue a written certificate signed by the state health officer or deny

the application and provide a written explanation of the recommendations for improvement needed before the department reconsiders the request for certification.

(4) (a) The department shall review the operations of the public health dispensary at least every 5 years.

(b) The department may withhold, suspend or revoke its certification if the local health department fails to comply with any of the following:

1. Applicable federal or state statutes, or federal regulations or administrative rules pertaining to medical assistance, occupational safety, public health, professional practice, medical records and confidentiality.

2. The official statement of the national tuberculosis controllers association.

Note: The official statement of the National Tuberculosis Controllers Association entitled "Tuberculosis Nursing: a Comprehensive Guide to Patient Care" is on file in the Revisor of Statutes Bureau and the Secretary of State's Office, and is available from the National Tuberculosis Controllers Association, 2951 Flowers Road South, Suite 102, Atlanta, GA 30341-5533.

3. The official statements of the American Thoracic Society.

Note: The official statements of the American Thoracic Society may be found in the Centers for Disease Control and Prevention's recommendations and report "Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection." The report may be found in the Morbidity and Mortality Weekly Report, June 9, 2000, Vol. 49, No. RR-6. The American Thoracic Society's "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children" may be found in the *American Journal of Respiratory and Critical Care Medicine*, vol. 149, 1994, pp. 1359-1374. The American Thoracic Society's "Diagnostic Standards and Classification of Tuberculosis in Adults and Children" may be found in *American Journal of Respiratory and Critical Care Medicine*, vol. 161, 2000, pp. 1376-1395. These reports are on file in the Revisor of Statutes Bureau and the Secretary of State's Office, and are available from the Department's Division of Public Health, P.O. Box 2659, Madison, WI 53701-2659.

4. The directives of the state health officer made under s. 252.02 (6), Stats.

(c) The department shall provide the local health department with at least 30 days notice of the department's decision to withhold, suspend or revoke its Certification.

(5) (a) A department action under sub. (3) or **(4)** is subject to administrative review under ch. 227, Stats. To request a hearing under ch. 227, the public health dispensary shall file, within 10 working days after the date of the department's action, a written request for a hearing under s. 227.42, Stats. A request is considered filed on the date the division of hearings and appeals receives the request. A request by facsimile is complete upon transmission. If the request is filed by facsimile transmission between 5 P.M. and midnight, it shall be considered received on the following day.

Note: A hearing request should be addressed to the Department of Administration's Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707. Hearing requests may be delivered in person to that office at 5005 University Avenue, Room 201, Madison, WI. **Hearing** requests may be faxed to 608-264-9885.

(b) The division of hearings and appeals shall hold an administrative hearing under s. 227.44, Stats., within 30 calendar days after receipt of the request for the administrative hearing, unless the public health dispensary consents to an extension of that time period. The division of hearings and appeals shall issue a proposed decision to the department no later than 30 calendar days after holding the hearing, unless the department and the public health dispensary agree to a later date.

(6) Public health dispensaries or the department may contract with other agencies, institutions, hospitals, and persons for the necessary space, equipment, facilities and personnel to operate a public health dispensary or for provision of medical consultation.

(7) If a public health dispensary charges fees for its services, the dispensary shall do all the following:

(a) Establish a fee schedule that is based upon the reasonable costs the public health dispensary incurs.

(b) Forward a copy of the fee schedule and any subsequent changes to the department.

(8) (a) Public health dispensaries and branches thereof shall maintain records containing all the following:

1. The name of each person served.
2. The date of service for each person served.
3. The type of service provided to each person.
4. The amount the dispensary billed and received for providing service to each person.

(b) The department may audit the records of public health dispensary and branches specified under par. (a).

History: Cr. Register, March, 2000, No. 531, eff. 4-1-00; CR 01-105: r. and reer. Register March 2002 No. 555, eff. 4-1-02..

HFS 145.13 Dispensary reimbursement. (1) REIMBURSABLE SERVICES. Public health dispensary services reimbursable by the department shall include at least the following:

(a) Tuberculin skin testing of high-risk persons as defined by the Centers for Disease Control and Prevention. The administration and reading of a tuberculin skin test shall be Considered one visit. Tuberculin skin tests administered to persons who are not defined as high-risk by the Centers for Disease Control and Prevention, such as school employees, are not reimbursable.

Note: "High-risk persons" are defined in the Centers for Disease Control and Prevention report, "Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection." The report may be found in the Morbidity and Mortality Weekly Report, June 9, 2000, Vol. 49, No. RR-6, and is on file in the Revisor of Statutes Bureau, the Secretary of State's Office, and is available from the Department's Division of Public Health, P.O. Box 2659, Madison, WI 53701-2659.

(b) One chest radiograph for a person with a newly identified significant skin test result, including interpretation and consultation services.

(c) One follow-up chest radiograph, including interpretation and consultation services, to document response to therapy.

(d) An initial medical evaluation and one interim medical evaluation, as needed.

(e) Blood specimen collection for one baseline and up to 3 follow-up liver function tests.

(f) Visits to collect initial diagnostic sputum specimens, either freely coughed or induced, and follow-up specimens to monitor successful treatment, up to a total of 3 initial and 6 follow-up specimens.

(g) Sputum induction for collection of up to 3 specimens for initial diagnosis and 3 for documentation of sputum conversion.

(h) Case management visits and visits to provide directly observed therapy to persons with tuberculosis disease up to a maximum of 66 visits.

(2) REIMBURSEMENT RATE. (a) The department shall reimburse public health dispensaries on a quarterly basis for services provided under sub. (1) to clients who are not recipients of medical assistance until the biennial appropriation under s. 20.435 (5) (e), Stats., is totally expended. Reimbursements shall be at least at the medical assistance program rate in effect at the time of the delivery of the service.

(b) Public health dispensaries may claim reimbursement from the medical assistance program under ss. 49.43 to 49.497, Stats., and chs. HFS 101 to 108 for services under sub. (1) provided to persons eligible for medical assistance under s. 49.46 (1) (a) 15., Stats.

History: Cr. Register, March, 2000, No. 531, eff. 4-1-00; CR 01-105: Cr. Register March 2002 No. 555, eff. 4-1-02..

Subchapter III — Sexually Transmitted Disease

HFS 145.14 Definitions. In this subchapter:

(1) "Commitment" means the process by which a court of record orders the confinement of a person to a place providing treatment.

(2) "Contact" means a person who had physical contact with a case that involved the genitalia of one of them during a period of time which covers both the maximum incubation period for the disease and the time during which the case showed symptoms of the disease, or could have either infected the case or been infected by the case.

(3) "Minor" means a person under the age of 18.

(4) "Sexually transmitted diseases" means syphilis, gonorrhea, chancroid, genital herpes infection, chlamydia trachomatis, and sexually transmitted pelvic inflammatory disease.

(5) "Source" means the person epidemiologic evidence indicates is the origin of an infection.

(6) "Suspect" means a person who meets the criteria in s. HFS 145.18.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; renum. and am. from HFS 145.12, Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.15 Case reporting. Any administrator of a health care facility, state correctional institution or local facility subject to eh. DOC 350, who has knowledge of a case of a sexually transmitted disease shall report the case by name and address to the local health officer. If the services of an attending physician are available in an institution or health care facility, the physician or a designee shall report as described in s. HFS 145.04 (1) (a). The administrator shall ensure that this reporting requirement is fulfilled.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1991, No. 430; renum. and am. from HFS 145.13, Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.16 Reporting of cases delinquent in treatment. Whenever any person with a sexually transmitted disease fails to return within the time directed to the physician or advanced practice nurse prescriber who has treated that person, the physician or advanced practice nurse prescriber or a designee shall report the person, by name and address, to the local health officer and the department as delinquent in treatment.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; renum. and am. from HFS 145.14, Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.17 Determination of sources and contacts. Physicians accepting cases for treatment shall determine the probable source of infection and any other contacts, and shall attempt to diagnose and treat those persons, or shall request that the local health officer or the department do so.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; renum. from HFS 145.15, Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.18 Criteria for determination of suspects. Any person falling into one or more of the following categories is designated as a suspect:

(1) Persons identified as sexual contacts of a sexually transmitted disease case;

(2) Persons having positive laboratory or clinical findings of sexually transmitted disease; and

(3) Persons in whom epidemiologic evidence indicates a sexually transmitted disease may exist.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; renum. from HFS 145.16, Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.19 Examination of suspects. Local health officers shall require the examination of suspects. The examination shall include a physical examination and appropriate laboratory and clinical tests.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; renum. from HFS 145.17, Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.20 Commitment of suspects. If, following the order of a local health officer or the department, a suspect refuses or neglects examination or treatment, a local health officer or the department shall file a petition with a court to have the person committed to a health care facility for examination, treatment or observation.

History: Cr. Register, April, 1984, No. 340, eff. 1-1-84; renum. from HFS 145.18, Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.21 Treatment of minors. A physician or advanced practice nurse prescriber may treat a minor with a sexually transmitted disease or examine and diagnose a minor for the presence of the disease without obtaining the consent of the

minor's parents or guardian. The physician or advanced practice nurse prescriber shall incur no civil liability solely by reason of the lack of consent of the minor's parents or guardian, as stated in s. **252.11** (Im), Stats.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; renum. and am. ~~from~~ HFS 145.19, Register, March, 2000, No. 531, eff. 4-1-00.

HFS 145.22 Treatment guidelines. Nationally recognized guidelines, including the "1998 Guidelines for Treatment of Sexually Transmitted Diseases" published by the U.S. Depart-

ment of Health and Human Services, shall be considered in the treatment of sexually transmitted diseases. Specific medical treatment shall be prescribed by a physician or advanced practice nurse prescriber.

Note: The publication, "1998 Guidelines for Treatment of Sexually Transmitted Diseases," is on file in the Department's Division of Public Health, the Revisor of Statutes Bureau and the Secretary of State's Office, and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325. Telephone: (202) 512-1800.

History: Cr. Register, April, 1984, No. 340, eff. 5-1-84; renum. and am. from HFS 145.20, Register, March, 2000, No. 531, eff. 4-1-00.

Chapter HFS 145

APPENDIX A
COMMUNICABLE DISEASES

CATEGORY I:

The following diseases are of urgent public health importance and shall be reported **IMMEDIATELY** to the patient's local health officer upon identification of a case or suspected case. In addition to the immediate report, complete and mail an Acute and Communicable Diseases Case Report (DOH 4151) to the address on the form within 24 hours. Public health intervention is expected as indicated. See s. HFS 145.04 (3) (a).

Anthrax^{1,4,5}
 Botulism^{1,4}
 Botulism, infant^{1,2,4}
 Cholera^{1,3,4}
 Diphtheria^{1,4,5}
 Foodborne or waterborne outbreaks^{1,2,3,4}
 Haemophilus influenzae invasive disease, (including epiglottitis)^{1,2,3,5}
 Hantavirus infection^{1,2,4,5}
 Hepatitis A^{1,2,3,4,5}
 Hepatitis E^{3,4}
 Measles^{1,2,3,4,5}

Meningococcal disease^{1,2,3,4,5}
 Pertussis (whooping cough)^{1,2,3,4,5}
 Plague^{1,4,5}
 Poliomyelitis^{1,4,5}
 Rabies (human)^{1,4,5}
 Ricin toxin^{4,5}
 Rubella^{1,2,4,5}
 Rubella (congenital syndrome)^{1,2,5}
 Smallpox^{4,5}
 Tuberculosis^{1,2,3,4,5}
 Yellow fever^{1,4}

CATEGORY II:

The following diseases shall be reported to the local health officer on an Acute and Communicable Disease Case Report (DOH 4 151) or by other means within 72 hours of the identification of a case or suspected case. See s. HFS 145.04 (3) (b).

Amebiasis^{3,4}
 Arboviral infection (encephalitis/meningitis)^{1,2,4}
 Babesiosis^{4,5}
 Blastomycosis⁵
 Brucellosis
 Campylobacteriosis (campylobacter infection)^{3,4}
 Cat Scratch Disease (infection caused by Bartonella species)⁵
 Cryptosporidiosis^{1,2,3,4}
 Cyclosporiasis^{1,4,5}
 Ehrlichiosis^{1,5}
 Encephalitis, viral (other than arboviral)
 E. coli O157:H7, and other enterohemorrhagic E. coli, enteropathogenic E. coli, enteroinvasive E. coli, enterotoxigenic E. coli^{1,2,3,4}
 Giardiasis^{3,4}
 Hemolytic uremic syndrome^{1,2,4}
 Hepatitis B^{1,2,3,4,5}
 Hepatitis C^{1,2}
 Hepatitis non-A, non-B,
 Hepatitis D^{2,3,4,5}
 Histoplasmosis⁵
 Kawasaki disease²
 Legionellosis^{1,2,4}
 Leprosy (Hansen Disease)^{1,2,3,4,5}
 Leptospirosis⁴
 Listeriosis^{2,4}
 Lyme
 Malaria^{1,2,4}
 Meningitis, bacterial (other than Haemophilus influenzae or meningococcal)²
 Meningitis, viral (other than arboviral)
 Mumps^{1,2,4,5}
 Mycobacterial disease (nontuberculous)
 Psittacosis^{1,2,4}

Q Fever^{4,5}
 Reye syndrome'
 Rheumatic fever (newly diagnosed and meeting the Jones criteria)⁵
 Rocky Mountain spotted fever^{1,2,4,5}
 Salmonellosis^{1,3,4}
 Sexually transmitted diseases:
 Chancroid',
 Chlamydia trachomatis infection^{2,4,5}
 Genital herpes infection (first episode identified by health care provider)²
 Gonorrhea^{1,2,4,5}
 Pelvic inflammatory disease²
 Syphilis^{1,2,4,5}
 Shigellosis^{1,3,4}
 Streptococcal disease (all invasive disease caused by Groups A and B Streptococci)
 Streptococcus pneumoniae invasive disease (invasive pneumococcal)¹
 Tetanus^{1,2,5}
 Toxic shock syndrome^{1,2}
 Toxic substance related diseases:
 Infant methemoglobinemia
 Lead intoxication (specify Pb levels)
 Other metal and pesticide poisonings
 Toxoplasmosis
 Trichinosis',^{2,4}
 Tularemia⁴
 Typhoid fever^{1,2,3,4}
 Typhus fever⁴
 Varicella (chicken pox) – report by number of cases only
 Yersiniosis^{3,4}
 Suspected outbreaks of other acute or occupationally-related diseases

CATEGORY III:

The following diseases shall be reported to the state epidemiologist on an AIDS Case Report (DOH 4264) or a Wisconsin Human Immunodeficiency Virus (HIV) Infection Confidential Case Report (DOH 4338) or by other means within 72 hours after identification of a case or suspected case. See s. 252.15 (7) (b). Stats., and s. HFS 145.04 (3) (b).

Acquired Immune Deficiency Syndrome (AIDS) ^{1,2,4}

Human immunodeficiency virus (HIV) infection^{2,4}

CD4 + T-lymphocyte count \leq 200/ μ L, or CD4 + T-lymphocyte percentage of total lymphocytes of \leq 14²

Key:

¹Infectious diseases designated as notifiable at the national level.

²~~Wisconsin~~ or CDC follow-up form is required. Local health departments have templates of these forms in the EpiNet manual.

³~~High-risk~~ assessment by local health department is needed to determine if patient or member of patient's household is employed in food handling, day care or health care.

⁴Source investigation by local health department is needed.

⁵~~Immediate~~ treatment is recommended, i.e., antibiotic or biologic for the patient or contact or both

FILING A COMPLAINT

COMPLAINTS AND THE DISCIPLINARY PROCESSED

Board Authority for Professional Discipline

Each of the licensing boards in the department has **statutory authority** to take disciplinary action against licensees who engage in unprofessional conduct or violate other rules/statutes of the board. Unprofessional conduct typically includes: practicing fraudulently, negligently, or incompetently, practicing while being impaired by alcohol, drugs or mental disability, conviction for a crime related to the licensed practice and similar serious matters.

In taking disciplinary action, boards have the **authority to reprimand** a licensee, to **suspend**, **revoke**, or **limit** a license. The purposes of professional discipline, as defined **by the Wisconsin Supreme court**, are: 1) to protect the public, 2) to promote the rehabilitation of the licensee, 3) to deter **other** licensees from engaging in similar conduct and 4) to **publicly** express disapproval of certain conduct.

How to File A Comulaint

Anyone who wishes to file a complaint against a licensee of a board or a complaint involving activity with the jurisdiction of that board should do so in writing. Preferably a **complaint** form should be completed. Complaint forms are available either through the department or **the Examining Board** offices at 1400 East Washington Avenue, Madison, Wisconsin, mailing address, P.O. Box 8935, Madison, Wisconsin, 53708. The complaint forms should be completed in detail, including the who, what, when, and where of a situation. The information should be set forth in chronological order as best as it can be recalled. If written documents are involved, copies should be included.

How the Comalaint Is Processed

After a complaint is received, it is logged in the department's Division of Enforcement and then screened to determine whether or not the matter is **something over** which the board has jurisdiction; and, if so, to identify the statute or rule that may have been violated. If the board does have jurisdiction, the complaint is assigned to an attorney and investigator for investigation.

The attorney and the **investigator** confer during the course of the investigation. In addition, a member of the board may be **assigned as** an advisor in the case. Investigative contacts can be made by telephone, letter, personal interview or any **combination** of those procedures. The investigation involves gathering relevant facts of the case. Persons with knowledge of the case are contacted. This usually includes the person who made the complaint and the person about whom the complaint was made. If treatment records are involved, they will be obtained. Confidentiality of the records will be maintained as required by law.

Once the investigation is complete, the investigator, attorney and board advisor review the results of the investigation and come to a preliminary decision on whether the case should be closed with no action taken, or whether formal disciplinary action should be commenced.

If the preliminary determination is for case closure, that recommendation, along with relevant findings, is presented by the **investigator** to the members of the board in closed session at a scheduled board meeting. If the board concurs, the file is closed by board motion. Letters are then sent to the person who filed the complaint and to the licensee, explaining that the case was closed and the reasons for closure.

If the determination by the investigative team is to commence disciplinary action, the Division of Enforcement attorney prepares all necessary documents, including a formal complaint against the licensee, and the matter is scheduled for a hearing.

How The Formal Comulaint is Resolved

Disciplinary hearings are conducted by hearing examiners, who are attorneys. While the statutes give the board the **authority to preside** over hearings without the use of a hearing examiner, most boards request that a hearing examiner be used. Furthermore, if the board members made the decision to issue a complaint, an examiner must be used. This ensures that the prosecutorial and adjudicative functions are separate, and that a **fair** and impartial decision is made.

The hearing examiner will generally schedule a **pre-hearing** conference between **the parties**. The major purposes of the pre-hearing conference are to set forth the issues in the case, determine what matters can be resolved without the need for formal testimony, and to establish a schedule for bringing the matter to hearing. Some of the cases, that may lead to the issuance of a formal complaint, are resolved by stipulation between the parties. Of course, such stipulations are subject to the approval of the board involved.

If a formal hearing is necessary, in most cases the hearing examiner presides over it. All testimony is under oath and transcribed. The parties are expected to call whatever witnesses are necessary. The process is very much like a trial. The length of the hearings **can range from** a few hours to several days. Once the hearing is **complete**, the hearing examiner prepares proposed findings of fact, proposed conclusions of law and a proposed decision. This is filed with the board, which reviews the decision and determines whether to affirm, reverse or amend it. If a member of the board participated in the investigation, that person is not involved in the board's decision on the case.

The board's options in disciplinary matters are: dismissing the complaint, reprimanding the licensee, limiting, suspending or revoking the licensee's license, or, in some instances, assessing a Forfeiture against the licensee. Boards do not have the authority to award monetary damages or to get money back that a party may believe is due. If a party is dissatisfied with a board decision, the decision can be appealed to circuit court. A circuit court decision can in turn be appealed to higher courts.

The above steps set forth very generally the process that takes place if a complaint is filed against a licensee of one of the boards attached to the department. Each case is different, and some variations may occur among the boards.

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